

08:57AM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER GERACE, JR.,

Defendant.

Case No. 1:19-cr-227
1:23-cr-37
(LJV)

December 19, 2024

TRANSCRIPT OF JURY TRIAL - CLOSING STATEMENTS
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY

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PRESENT:

KAREN A. CHAMPOUX, USA PARALEGAL

BRIAN A. BURNS, FBI SPECIAL AGENT

MARILYN K. HALLIDAY, HSI SPECIAL AGENT

OLIVIA A. PROIA, J.D., PARALEGAL

LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

COURT CLERK:

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Robert H. Jackson Courthouse
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09:07AM 1 (Proceedings commenced at 9:07 a.m.)

09:07AM 2 (Jury not present.)

09:07AM 3 **THE CLERK:** All rise. United States District Court
09:07AM 4 for the Western District of New York is now in session, the
09:07AM 5 Honorable Lawrence J. Vilaro presiding.

09:07AM 6 **THE COURT:** Please be seated.

09:07AM 7 **THE CLERK:** 19-cr-227 and 23-cr-37, United States of
09:07AM 8 America versus Peter Gerace Jr.

09:07AM 9 Assistant United States Attorneys Joseph Tripi, and
09:07AM 10 Nicholas Cooper, and Casey Chalbeck who is appearing by
09:07AM 11 teleconference, and paralegal Karen Champoux, appearing on
09:07AM 12 behalf of the government.

09:07AM 13 Also present is FBI Special Agent Brian Burns, and
09:08AM 14 HSI Special Agent Marilyn Halliday.

09:08AM 15 Attorneys Mark Foti and Eric Soehnlein, and paralegal
09:08AM 16 Olivia Proia, appearing with defendant. Defendant is present.

09:08AM 17 This is the date set for the continuation of a jury
09:08AM 18 trial.

09:08AM 19 **THE COURT:** Okay. Anything we need to do before we
09:08AM 20 bring the jury in?

09:08AM 21 **MR. COOPER:** I guess I just wanted to ask if the
09:08AM 22 Court has changed its mind with respect to the fear of severe
09:08AM 23 withdrawal system instruction?

09:08AM 24 **THE COURT:** I have not.

09:08AM 25 **MR. COOPER:** Okay.

25 (Jury seated at 9:11 a.m.)

09:11AM 1 **THE COURT:** Good morning, everyone.

09:11AM 2 **THE JURORS:** Good morning.

09:11AM 3 **THE COURT:** The record will reflect that all our
09:11AM 4 jurors are present. And we're going to begin the summations
09:11AM 5 now.

09:11AM 6 Mr. Cooper will sum up. We'll take a relatively
09:11AM 7 short lunch, and then the defense will sum up. And the
09:12AM 8 government has an opportunity to give a rebuttal after that.
09:12AM 9 Okay?

09:12AM 10 So, Mr. Cooper, the floor is yours.

09:12AM 11 **MR. COOPER:** Thanks, Judge.

09:12AM 12 Choices. This case is about choices, yeah. Let's
09:12AM 13 talk about the choices that this defendant made. The choices
09:12AM 14 that Peter Gerace made in his pursuit of money, in his pursuit
09:12AM 15 of power, and in his pursuit of his own sexual gratification
09:12AM 16 and the sexual gratification of others.

09:12AM 17 We can start with money.

09:12AM 18 The defendant set up Pharaoh's Gentlemen's Club as a
09:12AM 19 drug-involved premises. That was his business model.

09:12AM 20 Your screens aren't working?

09:13AM 21 **THE JURORS:** This one, and that one.

09:13AM 22 **THE COURT:** Mine is not either.

09:13AM 23 **MR. COOPER:** We paused the timer, Judge.

09:13AM 24 **THE JURORS:** Okay. We're good.

09:13AM 25 **MR. COOPER:** Everybody good? All right.

09:13AM 1 May I proceed, Your Honor?

09:13AM 2 **THE COURT:** Yep. Of course.

09:13AM 3 **MR. COOPER:** Thank you. No, that's okay.

09:13AM 4 All right. He set up Pharaoh's as a drug-involved
09:13AM 5 premises, and that was part of the business model. It's how
09:13AM 6 the club was designed to function. That was on purpose. This
09:13AM 7 defendant set up Pharaoh's Gentlemen's Club to fuel the
09:13AM 8 addictions of drug-addicted dancers, and he did that to keep
09:13AM 9 them on the floor, to keep them dancing, to keep them walking
09:13AM 10 into the VIP Room with whales like Wayne VanVleet and
09:13AM 11 countless other customers. And he did that for a reason,
09:13AM 12 because it filled his pockets with money.

09:13AM 13 Every single one of those dances that happened in the
09:13AM 14 VIP area, they only happened when the dancers had the drugs
09:13AM 15 that they need, so it's part of the business model.

09:14AM 16 He set up the club to supply customers with cocaine
09:14AM 17 because the more cocaine customers have access to, the more
09:14AM 18 cocaine they use, the more alcohol they drink which makes him
09:14AM 19 money, the more VIP dances they go and engage in which makes
09:14AM 20 him money, so it's part of the business model. It's woven
09:14AM 21 into the fabric of his club.

09:14AM 22 These crimes brought the defendant power, and you
09:14AM 23 learned about that. When you make a place like the upstairs
09:14AM 24 at Pharaoh's where important people, or people you think are
09:14AM 25 important, can go and snort cocaine without consequences, it

1 gives you access to power. And we're going to talk in detail
2 about it, but think about Judge John Michalski who went
3 upstairs with dancers that this defendant provided, and then
4 forged documents for him. And who happened to be the judge
5 that was deciding a protective order on controlled purchases
6 of drugs from his club?

7 That's power. That's access to power that this
8 defendant had because of the way he ran his business, his
9 club.

10 And sexual gratification. You probably heard more
11 about that than you wanted to during the course of this trial.
12 You heard testimony from witness after witness about how this
13 business, his business, was set up to gratify the sexual
14 desires of not just himself, but others.

15 The defendant, by setting himself up as a source of
16 supply for cocaine and highly addictive opiates like Lortabs
17 and other drugs, he made himself in a position of power to
18 demand sex from women that were heavily addicted to those
19 drugs, whenever he wanted it.

20 But it wasn't just his own sexual with gratification.
21 The business was set up to cater to the sexual gratification
22 of his friends, like Aaron LaMarca the liquor distributor who
23 would go upstairs and have sex with drug addicts that this
24 defendant set him up with; like his brother, David; like other
25 people; Judge Michalski going upstairs with Shelby, his

1 drug-addicted employee. He set it up to function that way.

2 And then you have the downstairs VIP area, part of
3 the business model. People are looking the other way at his
4 direction. I suggest to you you're gonna hear a lot about
5 this when the defendant tells L.L., go in the back with Wayne,
6 he's gonna stick his fingers in you, but he'll tip you extra,
7 and Brian will look the other way. That was this defendant
8 describing how he set up his business so that he could fill
9 his pockets with money.

10 His lawyers told you on their opening statement this
11 case was about choices. I agree. This case is about the
12 choices that Peter Gerace made to get what he wanted: Money,
13 power, and sexual gratification.

14 You listened to the witnesses like L.L. who testified
15 just last week into this week. Witnesses like K.L., P.H.,
16 K.A., and you learned about the wreckage that was left in the
17 wake of the choices that this defendant made so he could
18 pursue the things he wanted, like money, and power, and sexual
19 gratification.

20 It feels like a very long time ago, but during jury
21 selection each of you were selected basically to do a job in
22 service of the country. You were picked to come here, listen
23 to testimony of witnesses from that stand, review evidence,
24 listen to the law, apply the facts as you determine them to
25 the law as Judge Vilardo instructs it to you, and return a

1 just verdict. That's your job. So let's get to work.

2 There are four main boxes of proof in this case, four
3 different categories, and I'm going to try to separate it that
4 way so that we can go through it in an organized fashion.

5 The first category of proof in this case is
6 drug-trafficking proof. And there's two counts in the
7 indictment that represent that category of proof. So Count 3
8 in the indictment charges the defendant with maintaining a
9 drug-involved premises, and Count 4 charges the defendant with
10 conspiring to possess with intent to distribute and to
11 distribute drugs. Those are the two drug-trafficking counts.

12 The second box is sex trafficking. And that's
13 represented in the indictment in Count 5, conspiracy to commit
14 sex trafficking. And we'll talk more in detail about it in a
15 little bit.

16 The third category, as you know, is public
17 corruption. Count 1 charges this defendant in a conspiracy
18 with Joseph Bongiovanni to defraud the United States, to
19 deprive the DEA of the work that Joe Bongiovanni owed them
20 essentially.

21 The -- the second count in that public corruption
22 category is Count 2, and that's paying a bribe to a public
23 official. Those are two separate charges. We'll cover the
24 differences when we get there.

25 The final category is witness tampering. You learned

1 about P.H., you heard from her, and you heard from others
2 about what happened on November 19th, 2019, when the
3 defendant, Crystal Quinn, and C.C., were snorting cocaine
4 together in his basement, attempting to prevent P.H. from
5 continuing to cooperate, sending messages trying to stop her
6 from ever getting in that chair. That's the fourth category
7 of proof that we'll discuss.

8 We'll break it down, we'll go one at a time. And I'm
9 going to talk with you about what the elements of each of
10 those crimes are, and then I'm going to talk with you about
11 specific pieces of credible testimony and credible evidence
12 that support you returning a verdict of guilty on each of
13 those crimes. We'll hit every element, work through it
14 very -- in a very structured fashion.

15 And make no mistake about it, evidence includes
16 testimony from the witness stand. Evidence doesn't have to be
17 physical boxes and pieces of paper. When a person comes in
18 and swears an oath to tell the truth, and they talk with you
19 about things they observed, things they experienced, things
20 that happened to their bodies, that's evidence for you to
21 consider.

22 We're going to start with that first category,
23 though. Let's start with drug trafficking, and we're going to
24 start with Count 3, maintaining a drug-involved premises.

25 The indictment alleges that the defendant maintained

Pharaoh's as a drug-involved premises between about 2006 and December 12th, 2019.

That crime has three elements. The first is that the defendant permanently or temporarily used or maintained Pharaoh's Gentlemen's Club;

Second, the defendant maintained that place for the purpose of distributing and using controlled substances, drugs; and

Third, that the defendant acted knowingly.

Those are the three elements, and the judge will give you more detailed instructions later.

One note on distribution, though. You heard us ask witnesses this, we talked about it. Distribution doesn't require a sale. Giving someone drugs and getting nothing in return, distribution.

Causing another person to give someone drugs. If I give Joe drugs and say, hey, go give them to Karen, that's a distribution from me.

So distribution does not equate to sale, and I'd like for you to keep that in mind as we talk through this here.

We'll start with the first element. It's been established at this trial over and over and over again that the defendant maintained Pharaoh's Gentlemen's Club. We called, I think, 45 witnesses in the government's case, and I would suggest to you that I'm sure 30 of them discussed the

1 defendant being the owner of Pharaoh's. So we're going to
2 move through it, but we're not going to spend too much time in
3 that element.

4 I think when the judge instructs you on the law,
5 you're gonna hear him say it's not our burden to prove to you
6 that the defendant was the on-paper owner. I suggest to you
7 that's not what the law means when it says maintained a place.
8 And I expect you're gonna hear the judge say did the defendant
9 exercise significant supervisory control over the place, over
10 the activities that occurred there, for a period of time. And
11 let's think about what we learned in this case.

12 First of all, you can start with the 2009 probation
13 search as a -- kind of a lay-up of an example. Probation goes
14 there at like 8 in the morning before the business is open,
15 and who's there? The defendant. That's evidence that the
16 defendant maintained the place, certainly wasn't a customer, a
17 low-level employee. He was essentially there -- or, I suggest
18 the evidence shows you he was there overnight.

19 Witness after witness got on that stand and told you
20 Peter Gerace was the owner of Pharaoh's Gentlemen's Club.

21 You heard witnesses testify about his ability to hire
22 people. You heard witnesses testify about his ability to fire
23 people. That's significant supervisory control.

24 At the end of this case, after six weeks, there
25 should be no doubt left in your mind at all, let alone a

1 reasonable doubt, that the defendant maintained Pharaoh's
2 between '06 and '19.

3 And, by the way, when the judge instructs you on the
4 law, I expect you're not gonna hear him say he had to be in
5 complete control of that place every single day between 2006
6 and 2019. That's not required under the law. I want you to
7 pay close attention to what the judge discusses with you about
8 that.

9 You know from listening to the testimony of witnesses
10 throughout the course of this trial that for the vast majority
11 of time between 2006 and 2019, this defendant controlled
12 Pharaoh's Gentlemen's Club.

13 Let's move on to the second element, that Pharaoh's
14 was maintained for the purpose of using and distributing
15 controlled substances. That's also been proven to you beyond
16 a reasonable doubt.

17 I expect that that -- that the judge is going to tell
18 you that that element doesn't require that we prove to you
19 that using or dealing controlled substances was the only
20 purpose that the defendant maintained the club. I expect that
21 the judge is going to tell you that we have to prove that the
22 drug activity was a significant or important reason why the
23 defendant maintained the place. You know it was.

24 There's several reasons why you know that drug
25 activity, using and distributing drugs at Pharaoh's, was a

significant and important reason why he maintained that place.

The first one's obvious. The more money the club made, the more money he made. He's the owner. Common sense, not rocket science.

You heard testimony from numerous witnesses that selling alcohol made the club money, which means it made him money, and that the more cocaine people use, the more they're able to drink. So that's a part of the business model that this defendant set up, and we're going to get into detail about how he directed cocaine to be distributed in a little while. But the more cocaine there was flowing through the club, the more alcohol is sold.

In addition to that, the defendant was essentially selling this party atmosphere. And so by allowing, permitting, directing, and encouraging cocaine to flow freely through the club, he made it a place that people like John McDonald and Jeff Anzalone were dying to go.

So let's talk about Jeff Anzalone for a second. Was it -- was it an important purpose for the defendant to bring high-paying customers like Jeff to the club? Of course. Jeff said he went to Pharaoh's Gentlemen's Club over 100 times. And I got this -- the Court makes this, let me see if we can find Jeff here.

You're gonna be able to take this in the back. The Court puts together a photo of each witness. So if you don't

1 remember who someone is by their name, you know, you're going
2 to be able to come back and look.

3 But we have Jeff Anzalone. Jeff went to Pharaoh's
4 over 100 times. He testified from this witness stand every
5 single time he went there he used cocaine. And I asked him
6 Jeff, hey, what different areas around Pharaoh's did you use
7 cocaine? And he listed every place in the club. He couldn't
8 think of one location where he hadn't used club -- cocaine in
9 the club.

10 Downstairs office? Yes. Upstairs office? Yes.
11 Bar? Yes. Tables by the stage? Yes. Jeff was doing cocaine
12 all the time in Pharaoh's in every location in Pharaoh's, and
13 he was spending a lot of money there. And he's not the only
14 person.

15 Think about John McDonald. John McDonald loved
16 Pharaoh's. He testified pretty late in the trial, I'm sure
17 you remember him. John went to Pharaoh's, he distributed
18 cocaine there. And I asked him how many times have you been
19 to the club? He said it's uncountable.

20 And what did he like to do? It was obvious. He
21 liked to use drugs and distribute drugs. And the place he
22 chose to go was this defendant's club. And it's obvious why.
23 Because that's the way the business was set up to function.
24 Bring people like Jeff and John McDonald in to spend their
25 money, to make him rich.

09:27AM 1 This defendant distributed cocaine himself inside of
09:27AM 2 the club, and that's an important part of the reason why he
09:27AM 3 maintained it. Allowing other dealers like Marcus Black, and
09:27AM 4 Jessica Leyland or Charm, to distribute cocaine inside the
09:27AM 5 club, that was an important reason why the defendant
09:27AM 6 maintained the club.

09:27AM 7 Directing dancers to distribute cocaine to customers,
09:27AM 8 like A.A. told you that she did, and like Kevin Myszka
09:27AM 9 described for you that he procured cocaine that way, that was
09:28AM 10 an important reason why the defendant maintained the club.

09:28AM 11 All of that conduct was designed on purpose to keep
09:28AM 12 people there, to bring in the customer base that he wanted, to
09:28AM 13 keep them spending money, to keep them going into the
09:28AM 14 VIP Room.

09:28AM 15 You heard testimony cocaine use causes arousal. He's
09:28AM 16 selling sex at his business. Cocaine use was an -- cocaine
09:28AM 17 use and distribution was an important and significant part of
09:28AM 18 keeping the business humming.

09:28AM 19 And there was some mention on opening statement
09:28AM 20 about, oh, it's all alcohol sales, all the money comes from
09:28AM 21 alcohol. I submit to you that's inconsistent with everything
09:28AM 22 you heard from witnesses. But if we focus on alcohol for a
09:28AM 23 second, why are people going to Pharaoh's to buy, like, a \$15
09:28AM 24 beer? Or a drink that's double the price of a bar? What
09:28AM 25 brings them there? Sex. Women. That's what brings them

there.

And the defendant's club wasn't going to be able to sell drinks at those over, you know, inflated prices unless customers were going there to engage in what you heard happened in the VIP Room.

In order for the dancers to be able to function and go in the VIP Room to work, many of them came in here and testified to you they needed nearly constant access to cocaine, and some of them opiates. The business wasn't gonna function, it wasn't gonna run, unless there was a steady flow of drugs going through it, and he knew that. That's not a shock to this defendant. You heard direct evidence of his knowledge of that.

We'll talk about it right now.

Think about what E.H. told you. E.H., you're gonna remember E.H., she's the woman who told Mr. Soehnlein she's on Team Not Getting Jizzed on and Told She Can't Call the Police.

E.H. went upstairs to put her luggage away, and she saw the woman who she had just observed downstairs overdosing. She saw her in the upstairs snorting cocaine. And E.H. looks at the woman, and this defendant looks at E.H., and what happens? He says to her, I help the girls out if they can't work. I can get you some, too.

That's the business model. If the women can't work, he's not making any money, so keeping constant access to drugs

1 available at the club was important. It was significant.

2 G.R. testified to you that when she worked at
3 Pharaoh's in 2009, when she was heavily addicted to cocaine
4 and opiates, that she could not have gotten through a single
5 shift at Pharaoh's without using cocaine or opiates.

6 A.B. testified to you that she worked at Pharaoh's a
7 decade later in 2019, and that she was so heavily addicted to
8 cocaine she used it multiple times per shift, every single
9 shift she worked. Ms. A.B. testified that if she didn't have
10 cocaine and she started to come down, she became suicidal.

11 And so when you use your common sense and your life
12 experience, and you evaluate Ms. A.B.'s testimony, you know
13 she wasn't going to be going in the VIP Room and giving lap
14 dances and making him money if she didn't have access to
15 cocaine. That wasn't gonna happen.

16 P.H. told you that when she would go through
17 withdrawals at Pharaoh's, the defendant would provide her with
18 opiates.

19 K.A., who worked at Pharaoh's from about 2012 until
20 about 2014, told you that she used between 2- and \$300 per
21 night of heroin and cocaine. Every night.

22 She said every time she went to work, she got high
23 there on cocaine and heroin. She testified, importantly I
24 would suggest to you, that she would not have been able to
25 dance if she wasn't high on drugs.

1 And that's consistent, this is a pattern that you
2 heard from witness after witness, if I didn't have access to
3 drugs, I would not have been able to work. That tells you
4 that it was part of the business model.

5 A.A. told you that she worked at Pharaoh's from 2012
6 to 2013. She testified that she was using between 6- and \$900
7 per day of fentanyl, and that she was smoking fentanyl patches
8 every single shift she worked at Pharaoh's. She said she
9 would not have been able to dance or do anything if she didn't
10 have access to drugs at the club where she's working.

11 R.W. also testified that when she worked at Pharaoh's
12 in 2012, that she got nervous before going on stage the first
13 time, and the DJ was like, oh, you're nervous? Here.
14 Cocaine.

15 That's how the business runs. It's ingrained in the
16 business model that this defendant set up.

17 I want to move on now to Wayne VanVleet for a second.

18 Wayne VanVleet is an example of the business model at
19 work. You heard testimony from more than one witness that he
20 was considered a whale at the club because he was there all
21 the time and he spent a lot of money.

22 Wayne spent all that money in the VIP Room, money
23 that ended up in this defendant's pockets, but Wayne isn't
24 there spending money in the VIP Room unless the dancers are
25 able to go back there with him, and they're not doing that

1 unless they have nearly constant access to drugs.

2 All three women that you heard testify to about
3 interacting with Wayne VanVleet told you they were heavily
4 addicted to drugs at the time, that they would have never let
5 him do what he did to them, and we'll get there, if it wasn't
6 for those drug addictions.

7 So because money was making -- because making money
8 was a significant reason that the defendant maintained the
9 club, making sure that dancers had constant access to drugs
10 was a significant reason that the defendant maintained the
11 club. It's part of the business model.

12 Another reason that keeping drugs flowing through
13 Pharaoh's was important and significant to this defendant is
14 because of the access to power that it gave him.

15 You heard testimony that the defendant had a private
16 upstairs area where he brought lawyers, and judges,
17 politicians, athletes, at least one actor, and members of
18 powerful motorcycle gangs. Having access to those people,
19 having something that they wanted, gave him a status and power
20 that he wanted.

21 You know what mattered to him. He bragged about it.
22 He bragged about the judges, and the important people in law
23 enforcement that he knew. And you don't need to be a rocket
24 scientist to know why those people wanted to come to Pharaoh's
25 and go upstairs.

1 I suggest to you the testimony established that
2 certain prominent people who wanted to have a place to go and
3 snort cocaine without consequences knew where to go. They
4 went to this defendant, they went to Pharaoh's Gentlemen's
5 Club.

6 The upstairs at Pharaoh's was maintained on purpose
7 as a place to use and distribute cocaine. Distribute it to
8 your friends, distribute it to dancers, use it yourself. That
9 was a significant and important reason why he maintained the
10 club.

11 The third reason that you know using and distributing
12 drugs was the purpose or a significant purpose for the
13 defendant maintaining the club was because it allowed him to
14 have his own personal sex party and drug party upstairs.

15 Let's -- let's recap what we learned about that.

16 C.B. testified, she was a manager, she was the Jets
17 fan, she testified that she was a manager between 2011 and
18 2013. She told you about the difference between what Don
19 Parrino wanted out of the club and what this defendant wanted.

20 So back in that timeframe when Parrino was still
21 around in 2011 to '13, she said, yeah, Parrino wanted me to
22 wear 4-inch heels and a bolero jacket, which I had to Google,
23 and she said that Peter Gerace wanted her -- wanted it to be
24 Peter's Playhouse. Those were her words. And she described
25 for you what she meant by "Peter's Playhouse."

1 She told you that she saw the defendant bringing
2 dancers upstairs, and that she saw the dancers come downstairs
3 after, that they appeared to be high on drugs, and that they
4 would ask her for baby wipes, or tell her that they needed to
5 clean themselves up. She wasn't exactly out on an island with
6 that testimony either.

7 A.G., a/k/a Barbie, she was a short blonde-haired
8 woman who testified probably middle of the trial. She told
9 you that on her second day working at Pharaoh's, the defendant
10 invited her upstairs with two other women to party. She told
11 you that she interpreted "party" in that context to mean use
12 drugs with him and have sex with him. She declined. And
13 we'll talk about what happened to her in a little bit.

14 G.R. observed the defendant using and distributing
15 cocaine upstairs. The defendant brought G.R. up there to use
16 drugs, to coerce her into sex, so he could impress his friends
17 like she was a party favor.

18 J.Z. observed the defendant using and distributing
19 cocaine upstairs.

20 A.A. observed the defendant using and distributing
21 cocaine upstairs.

22 A.P. observed the defendant using and distributing
23 cocaine upstairs.

24 A.B. observed the defendant -- she testified the
25 defendant brought her upstairs and gave her cocaine.

1 C.C. said she observed the defendant using and
2 distributing cocaine upstairs up to 20 times, that was her
3 testimony.

4 P.H. testified that she was provided cocaine by the
5 defendant upstairs. She also testified that she went upstairs
6 with this defendant and a member of the Pagan's Motorcycle
7 Club, and they snorted methamphetamine up there.

8 Katrina Nigro observed the defendant using and
9 distributing cocaine upstairs.

10 K.L. observed the defendant using and distributing
11 cocaine upstairs. And you know what happened to K.L., you
12 know she was brought upstairs to be coerced into sex.

13 L.L. observed the defendant using and distributing
14 cocaine in the upstairs.

15 This defendant getting to have his own personal
16 space, where vulnerable drug-addicted women were just a
17 staircase away, that was a significant and important reason
18 that he maintained Pharaoh's. That's the second element.

19 The third element, that the defendant acted
20 knowingly, that he had knowledge.

21 I expect that the judge is going to tell you a person
22 does something knowingly when they do it voluntarily, when
23 it's, you know, on purpose and not by accident or by mistake.
24 That makes sense.

25 You know the defendant knowingly maintained Pharaoh's

1 for the purpose of using and distributing drugs based on his
2 own words and his own actions.

3 We talked about E.H. When the defendant brings this
4 overdosing dancer upstairs and has her doing lines of coke to
5 wake her up so she can get back to work, and he tells
6 Ms. E.H., I help the girls if they need to work, I can get you
7 some too, that speaks to his knowledge that he was maintaining
8 Pharaoh's for the purpose, a significant or important purpose
9 was to distribute drugs because it kept the business moving.

10 The defendant's actions tell you that he acted
11 knowingly. L.L. testified that when she showed up to work
12 dope sick going through physical withdrawals from heroin, she
13 was unable to work, she couldn't do anything when she was like
14 that. She said this defendant called someone and had opiates
15 delivered to her there so that he could get her back on the
16 floor, get her back to work, get her back to filling his
17 pockets up with money. It has to happen in order for the
18 business to work, and that's how you know the defendant acted
19 knowingly. His own words and his own actions validate and
20 support that he acted knowingly.

21 Giving cocaine to customers or making cocaine
22 available to customers, that was an important part. And
23 that's why this defendant chose to allow dealers like Marcus
24 Black -- you heard a lot of testimony about Marcus, one of the
25 preferred drug dealers that this defendant had working at his

1 club, Charm, these were people, A.A., that not only sold drugs
2 at his club, but people he knew that sold drugs at his club,
3 and people that tons of witnesses testified he was incredibly
4 close with.

5 I suggest to you that the proof, the evidence, shows
6 that people like Marcus and Jessica were employees at the club
7 in truth, if not on paper. Their job was to sell drugs there.
8 They got money, and he had a club with constant access to
9 cocaine, which made his club more money. So that's Count 3,
10 maintaining a drug-involved premises.

11 I suggest to you that when you start your
12 deliberations, this is just my suggestion, I suggest you start
13 at Count 3. Work your way through it.

14 Element 1, check, he maintained the place.

15 Element 2, check, he did it for the purpose, a
16 significant purpose of making drugs available, distributing
17 and using them.

18 Element 3, he acted knowingly, check.

19 Proven beyond a reasonable doubt right here in this
20 courtroom. Find him guilty of Count 3, because his choices,
21 and his conduct, make him guilty of Count 3.

22 Let's talk about Count 4. Conspiracy to distribute
23 controlled substances between February -- or, between 2009 and
24 February of 2019.

25 Let's talk briefly about conspiracy generally.

1 I expect that Judge Vilardo's gonna, you know, he'll
2 instruct you on the law of what a conspiracy is. I expect
3 he's going to tell you it's basically a criminal partnership.
4 It's an agreement between two or more people to violate some
5 law of the United States.

6 And in Count 4, it's an agreement between this
7 defendant and other people to distribute drugs, and to possess
8 with the intent to distribute drugs.

9 There's two elements to a narcotics conspiracy.

10 First, that two or more people entered the unlawful
11 agreement charged in the indictment; and

12 Second, that the defendant knowingly and willfully
13 became a member of that agreement, of that conspiracy.

14 So in order to know in the first element if -- if two
15 or more people existed in that unlawful agreement charged in
16 the indictment, you need to know what is the unlawful
17 agreement charged in the indictment. And you'll get the
18 indictment when you go back there, you'll be able to look at
19 it. But it has two parts, the agreement, you'll see.

20 One, to possess with intent to distribute and
21 distribute cocaine, cocaine base, methamphetamine,
22 amphetamine, marijuana, or heroin, or, to maintain Pharaoh's
23 Gentlemen's Club for the purpose of distributing and using
24 those same drugs that I just listed.

25 To boil it down as simple as possible, the indictment

1 charges a conspiracy or an agreement, between two or more
2 people, including him, to distribute drugs or to maintain
3 Pharaoh's for the purpose of using or distributing drugs.

4 If we prove either of those two objects to you,
5 either of those two objects of the conspiracy, I suggest the
6 judge is going to instruct you that that's sufficient, it
7 doesn't have to be both.

8 I submit to you that we've proven both beyond a
9 reasonable doubt. But keep in mind, either one of those
10 objects of the conspiracy is sufficient to find this defendant
11 guilty.

12 Let's talk about how we proved the existence of an
13 agreement to distribute drugs.

14 Obviously, it's not a scene from a, like, a movie
15 where there's a bunch of villains in costumes sitting around a
16 huge conference table. That's not how things happen in real
17 life. I expect that the judge is going to tell you that when
18 you determine whether the agreement existed here, you should
19 keep in mind that it doesn't have to be an express or formal
20 or written agreement. That's not required under the law.

21 I expect that the judge is going to tell you that you
22 have to find that there was a mutual understanding, spoken or
23 unspoken, a mutual understanding between people to cooperate
24 with each other, to accomplish an unlawful act. And selling
25 drugs is an unlawful act.

09:45AM 1 So did the defendant have a mutual agreement, a
09:45AM 2 mutual understanding, spoken or unspoken, with other people to
09:45AM 3 sell drugs at Pharaoh's? You know he did.

09:45AM 4 The defendant was in an unlawful agreement. He had a
09:45AM 5 mutual understanding with his good friend, Marcus Black. You
09:45AM 6 heard testimony in detail from A.A. that customers would come
09:45AM 7 up to her, they would ask for cocaine, she would go and check
09:45AM 8 with this defendant, hey, should I -- can I get that person
09:45AM 9 cocaine? And he would say, yeah, go see Marcus. She'd go to
09:45AM 10 Marcus, she'd get the drugs, and she'd deliver them. That's a
09:45AM 11 conspiracy right there. That's it.

09:45AM 12 It's an -- a mutual understanding between those three
09:45AM 13 people to sell drugs at Pharaoh's.

09:45AM 14 And it's not the only conspiracy -- or, the only
09:45AM 15 member of the conspiracy that existed. The defendant was in
09:46AM 16 that same unlawful agreement, he had that same mutual
09:46AM 17 understanding with Jessica Leyland, another preferred drug
09:46AM 18 dealer who sold to customers and dancers at Pharaoh's.

09:46AM 19 Based on the testimony of L.L., you know the
09:46AM 20 defendant was in an unlawful agreement with Scooter, the
09:46AM 21 person who would drop off heroin to the defendant to provide
09:46AM 22 to L.L. so she could work.

09:46AM 23 Kevin Myszka described for you when he went to
09:46AM 24 Pharaoh's one time that he had been using cocaine, he was a
09:46AM 25 drug addict, he ran out of cocaine, and he wanted to use more.

09:46AM 1 And so in order to stay at the club, Kevin Myszka needed to
09:46AM 2 use more cocaine or else, I submit to you, he was going to
09:46AM 3 leave. And so he goes to the defendant, and he says hey, can
09:46AM 4 I get some coke? Or whatever words, I don't think he
09:46AM 5 remembered the exact words he uses, but he asked the defendant
09:47AM 6 for cocaine.

09:47AM 7 Minutes later, a dancer who I submit to you is
09:47AM 8 probably Cherry, probably A.A. here, comes walking over and
09:47AM 9 delivers Kevin Myszka cocaine. That's the mutual
09:47AM 10 understanding that this defendant had with other members of
09:47AM 11 his drug conspiracy. Provide drugs to the customers, keep the
09:47AM 12 club flowing, keep the money pouring into my pockets. It's an
09:47AM 13 agreement to distribute drugs. People acting together to
09:47AM 14 accomplish an unlawful purpose.

09:47AM 15 The second element, we have to prove the defendant's
09:47AM 16 membership in the conspiracy. We have to prove to you that
09:47AM 17 this defendant knowingly and willfully and voluntarily became
09:47AM 18 a member of that agreement with that mutual understanding to
09:47AM 19 sell drugs at Pharaoh's, or to maintain Pharaoh's as a
09:47AM 20 drug-involved premises.

09:47AM 21 In determining that, you'll be asked to decide, to --
09:47AM 22 to question yourselves, did he have a stake, like a financial
09:48AM 23 stake or some other type of stake, in the outcome of the
09:48AM 24 conspiracy? And I suggest to you that you know he did. In
09:48AM 25 terms of distributing drugs at Pharaoh's, the defendant had an

09:48AM 1 obvious financial motive to allow, permit, encourage, and
09:48AM 2 sometimes direct that to happen, to sometimes do it himself.

09:48AM 3 It made the club more money. You heard from
09:48AM 4 customers, you heard from dancers, that cocaine was integral
09:48AM 5 to the functioning of the club.

09:48AM 6 You heard from numerous drug-addicted dancers.
09:48AM 7 People that were addicted to Lortabs like K.L., like P.H.
09:48AM 8 They wouldn't have been able to work if they didn't have
09:48AM 9 access to those drugs, so this defendant had a stake, he had a
09:48AM 10 financial interest, in order to keep his business flowing,
09:48AM 11 keep the gears turning, to make sure that drugs were available
09:48AM 12 to be distributed.

09:48AM 13 You heard testimony from A.P., and it was a really
09:49AM 14 long time ago at this point. She was witness number 2. But
09:49AM 15 that's A.P., nobody could pronounce her last name, A.P.
09:49AM 16 testified that she had been dating the defendant on and off
09:49AM 17 and she worked at Pharaoh's from 2006 to 2013. She told you
09:49AM 18 that she knew and she -- think about it, back then she was
09:49AM 19 close to the defendant, they were dating, she knew him to be
09:49AM 20 close friends with Marcus Black. She told you the defendant
09:49AM 21 would send her to buy cocaine from Marcus and bring it back to
09:49AM 22 him. That's an -- that's an agreement, a mutual
09:49AM 23 understanding, to use and distribute drugs at Pharaoh's, to
09:49AM 24 maintain Pharaoh's for the purpose of -- of distributing and
09:49AM 25 using drugs.

09:49AM 1 A.P. told you that she had personally observed the
09:49AM 2 defendant buying drugs from Marcus. And all that goes to this
09:49AM 3 question, did he knowingly and willfully become a member of
09:49AM 4 this agreement. He knew Marcus was a drug dealer, and for
09:49AM 5 years, over the course of 45 witnesses' testimony, you heard
09:49AM 6 about Marcus being at the club all the time, constantly. That
09:50AM 7 speaks to his knowledge, his willingness to be in this
09:50AM 8 agreement, to have Marcus selling drugs to customers and
09:50AM 9 dancers at Pharaoh's.

09:50AM 10 A.B. told you that she saw Marcus Black frequently at
09:50AM 11 Pharaoh's, and that he interacted most with the defendant.

09:50AM 12 I expect the judge is going to tell you that
09:50AM 13 conspiracies by their nature are secretive, right? That's the
09:50AM 14 point, you don't want to get caught, you're trying to keep it
09:50AM 15 quiet, so actions often speak louder than words. I expect
09:50AM 16 that's going to be in his instruction to you. But think about
09:50AM 17 what you heard from the witnesses. Marcus Black and Peter
09:50AM 18 thick as thieves, together all the time at the club, and
09:50AM 19 Marcus is there selling cocaine. That's what he does. That's
09:50AM 20 his job.

09:50AM 21 You can and should infer from that the obvious, which
09:50AM 22 is they were doing it together. It was in the defendant's
09:50AM 23 best interest that Marcus sold drugs there, and it was in
09:50AM 24 Marcus's best interest. Marcus had a ready base of customers
09:51AM 25 at Pharaoh's. Dancers needed cocaine, customers wanted

09:51AM 1 cocaine, Peter was blowing tons of cocaine upstairs with his
09:51AM 2 friends. So Marcus was raking in money. And this defendant
09:51AM 3 needed to keep the coke flowing through the club. So they
09:51AM 4 have a mutual understanding, they have an agreement, and
09:51AM 5 that's the crime charged in Count 4.

09:51AM 6 You heard from R.W. that she heard Marcus Black
09:51AM 7 advertising with his mouth, with his words, advertising, hey,
09:51AM 8 I got White Girl, I got White Girl for sale. And there was
09:51AM 9 some cross-examination suggesting that maybe she got it wrong
09:51AM 10 and he was talking about, like, Caucasian women that worked at
09:51AM 11 the club. But I suggest to you that if you use your common
09:51AM 12 sense, you can dispense with that. R.W. was a drug addict,
09:51AM 13 and she knew the slang used for drugs, and she told you,
09:51AM 14 testimony that I submit you should find credible, that White
09:51AM 15 Girl was in reference to cocaine when Marcus Black was saying
09:51AM 16 it. And it's consistent with the testimony of essentially all
09:51AM 17 of the other witnesses that Marcus sold cocaine at the club.

09:52AM 18 Then you have A.A. who came here and told you about
09:52AM 19 her own participation in that conduct. And I would suggest to
09:52AM 20 you that you can see the -- the way that that built up, the
09:52AM 21 way that the defendant brought A.A. upstairs, she described
09:52AM 22 that for you. She said the defendant put a credit card with
09:52AM 23 cocaine up to her nose and told her to sniff, she sniffed it.
09:52AM 24 And that's grooming behavior. It's like, hey, let's get her
09:52AM 25 on board with the drug stuff and we'll use her to hit off the

09:52AM 1 customers.

09:52AM 2 Who were the two people that were up there with her?

09:52AM 3 Marcus and this defendant. Bringing her into the fold.

09:52AM 4 Peter's not gonna be handing out the drugs to the customers on

09:52AM 5 the floor, and this insulates Marcus as well if anybody gets

09:52AM 6 caught making a handoff, that's the dancer, that's part of the

09:52AM 7 corrupt agreement, the criminal conspiracy that this defendant

09:52AM 8 was at the center of at his club.

09:52AM 9 Marcus wasn't the only preferred drug dealer. Let's

09:53AM 10 look at Jessica Leyland, a/k/a Charm.

09:53AM 11 So these three pictures in evidence, 560, 561, and

09:53AM 12 562, I submit to you that they show you physically how close

09:53AM 13 she was to the defendant, and they also depict what you heard

09:53AM 14 from the testimony of lots of witnesses during the course of

09:53AM 15 this trial.

09:53AM 16 A.P., she told you that Charm was very close with the

09:53AM 17 defendant, and that Charm was a drug dealer who sold cocaine

09:53AM 18 to dancers, employees and customers.

09:53AM 19 And, by the way, A.P., who was dating him, was also

09:53AM 20 one of the preferred drug dealers who sold cocaine to

09:53AM 21 customers at Pharaoh's and dancers at Pharaoh's.

09:53AM 22 C.C., she was the defendant's fiancée for a period of

09:53AM 23 time. She testified that Charm sold cocaine, that's Jessica

09:54AM 24 here, Charm sold cocaine to people at Pharaoh's. And she also

09:54AM 25 testified when she was asked did the defendant know Charm was

1 selling cocaine, and C.C. said yeah, it was obvious.

2 C.B. testified that Charm would come out of the
3 feature dressing room, and it would look like a snow globe in
4 there.

5 P.H. testified she knew Jessica Leyland, Charm, to be
6 very, very close and loyal to this defendant. P.H. testified
7 that the defendant had actually sent her to purchase cocaine
8 from Charm while they were at Pharaoh's. And that speaks to
9 the defendant's knowledge. He knows Leyland's a drug dealer,
10 she's someone he's very, very close to, she's loyal to him.
11 You put those pieces together, you know that the defendant
12 wasn't unhappy that Jessica Leyland was selling drugs at the
13 club. He didn't fire Jessica Leyland for selling drugs at the
14 club. It's part of the business model. You need drug dealers
15 there so that dancers and customers can get high. She was one
16 of the preferred drug dealers at the club.

17 Katrina Nigro told you that the defendant had an
18 arrangement with Charm where Charm would have this stag
19 company help bring women to the club to work there, and that
20 the defendant let her deal drugs at the club.

21 They each had a stake in the outcome. Think about
22 that, same as Marcus Black's stake. Charm has customers all
23 over the place. She's distributing individually-packaged bags
24 of cocaine, so it's not like she has one friend who says hey,
25 can I get a bump?, and she gives it one time to someone. She

1 got pulled over leaving Pharaoh's, and she had however much
2 cocaine that the state trooper found in her car -- and
3 Mr. Tripi will probably be able to remind me of how much that
4 was -- but it was individually packaged. It was set up for
5 sale. That was her business, she made money. And the
6 defendant, he benefited from it also for all the reasons that
7 we've discussed, and I'm not going to get repetitive. Well,
8 not more repetitive.

9 Corrupt DEA Agent Joe Bongiovanni, he's a member,
10 he's a member of the narcotics conspiracy. Here he is. And
11 we'll talk about him in a lot more detail when we get to the
12 public corruption spot. But just because he's not handing out
13 drugs at Pharaoh's doesn't mean he doesn't have a role in the
14 conspiracy.

15 He has a very different, very important role in this
16 defendant's narcotics conspiracy:

17 Keep me safe. When probation comes, or when the FBI
18 starts investigating, or when the DEA starts investigating,
19 shut it down.

20 Give me advice. Hey, I'm a drug dealer. Drug
21 dealers, burner phones, can the law enforcement ping those and
22 locate them? And Bongiovanni responds on retainer for this
23 defendant. That's his role in the conspiracy. And we'll dig
24 more into that in a little bit.

25 The judge is -- I expect the judge is going to tell

1 you that not everybody in a conspiracy has to have an equal
2 role, not equal culpability. The elements, tether
3 yourselves -- I suggest you, you should tether yourself to the
4 elements. Facts plus law equals verdict.

5 So look at those elements, apply the facts as you
6 decide them, and that's how you should come to a verdict.

7 I want to point out also before we move on from
8 narcotics conspiracy, there's numerous different substances
9 that are listed in the indictment, I read them earlier,
10 cocaine, cocaine base, methamphetamine, amphetamine, heroin,
11 and marijuana. All those are listed as objects of the
12 conspiracy to use or distribute those substances.

13 You do not have to find that all of those substances
14 were a part of this conspiracy to convict the defendant. One
15 of them, or any combination of them, is sufficient. And I
16 expect the judge will instruct you on that when he instructs
17 you on the law.

18 So cocaine. Right? Let's start with an easy one.
19 Cocaine, which you heard tons of testimony about, was an
20 obvious object of the mutual agreement, the criminal
21 partnership, to distribute drugs at Pharaoh's. And because
22 cocaine was one of the substances listed, that's sufficient
23 even if you didn't believe, for example, amphetamine was.

24 Now, I submit to you that you've heard testimony on
25 every substance, and that we've proven this agreement to

1 distribute those drugs beyond a reasonable doubt.

2 Now, the defendant might argue, hey, I -- how could I
3 have possibly known every time Marcus Black was selling drugs?
4 Or how could I have possibly known every customer that Charm
5 was hitting off at the club?

6 That doesn't matter. The judge is going to explain
7 to you that coconspirators don't need to be apprised or aware
8 of every action that another coconspirator undertakes. You
9 don't need to know all the details of the conspiracy.

10 I expect the judge is going to tell you that what's
11 necessary is that the defendant must have participated in the
12 conspiracy with knowledge of at least some of its purposes or
13 objectives and with the intention of aiding in the
14 accomplishment of those unlawful ends. Check.

15 The defendant knew the objective was to sell drugs to
16 customers and dancers and keep the club making money. He
17 intended to accomplish that objective in the ways we just
18 discussed. Sometimes handing the drugs out himself, sometimes
19 directing A.A. go to Marcus, and by setting up specific
20 preferred drug dealers that were allowed to work and sell at
21 the club like Jessica Leyland, Marcus Black and others.

22 So that's Count 4, conspiracy to distribute
23 controlled substances. A mutual understanding and agreement
24 between two or more people to move drugs through the club. To
25 maintain Pharaoh's as a drug-involved premises.

1 Two elements, both met, proven beyond a reasonable
2 doubt right here in this courtroom.

3 Find him guilty of Count 4, because his choices and
4 his conduct make him guilty of Count 4.

5 And that covers the first category of proof, drug
6 trafficking. I told you we're going to cover four different
7 ones, they're not all equal length, so --

8 The next one, though, is -- is a big one, the next
9 category of proof is sex trafficking. We're going to cover
10 this category, we'll talk about Count 5, and then I'm going to
11 ask the judge for a break. So, let's talk about the sex
12 trafficking here.

13 Conspiring to commit sex trafficking between 2009 and
14 2018. That's what the defendant's charged with in Count 5.
15 And that crime has two different elements.

16 First, that a conspiracy existed to commit sex
17 trafficking of an adult by force, threats of force, fraud, or
18 coercion was formed or reached or entered into by two or more
19 persons. That's the criminal partnership we were talking
20 about a minute ago.

21 Second, that at some time during the existence of
22 that conspiracy, the defendant knowingly and willfully became
23 a member of the conspiracy.

24 So those are the two elements for Count 5.

25 But in order to understand whether someone is guilty

1 of conspiring to commit sex trafficking, we really need to get
2 into the weeds on what is sex trafficking. So I'm going to
3 cover those elements with you now, but I want you to keep in
4 mind, and you're smart, you get it, the elements that are
5 required for Count 5 are the two conspiracy elements.

6 But let's talk about what sex trafficking is, the
7 substantive offense.

8 I warn you, the statute is long and it's wordy
9 because there's a lot of different ways to commit sex
10 trafficking of an adult by force or coercion.

11 The first element that the defendant knowingly
12 transported, or recruited, or enticed, or harbored, or
13 provided, or obtained, or maintained, or patronized, or
14 solicited a person by any means. Or benefited financially in
15 participation -- from participation in a venture which engages
16 in some of those acts. That's element one, procuring a
17 person, basically.

18 Second, that the defendant knew or was in reckless
19 disregard of the fact that force, fraud, or coercion would be
20 used with respect to this person.

21 Third, that the defendant knew or was in reckless
22 disregard of the fact that this person would be engaged in a
23 commercial sex act, sex in exchange for something of value.

24 And fourth, that the defendant's conduct was in or
25 affecting interstate or foreign commerce.

10:03AM 1 Let's start with the first element.

10:03AM 2 G.R. The defendant enticed, he solicited, and he
10:03AM 3 provided G.R.

10:03AM 4 A.A. The defendant enticed, solicited, and provided
10:03AM 5 A.A.

10:03AM 6 L.L., K.A. The defendant enticed, solicited, and
10:03AM 7 provided them.

10:03AM 8 The defendant enticed, solicited, and provided Shelby
10:03AM 9 Johnston.

10:03AM 10 Think about the testimony of L.L. in particular for a
10:03AM 11 moment. In that moment that L.L. described for you where the
10:03AM 12 defendant, who knows she's a drug addict, tells her, go in the
10:03AM 13 back with Wayne, he's gonna stick his fingers inside of you,
10:03AM 14 but he'll tip you extra, and Brian will overlook the camera.
10:04AM 15 His words.

10:04AM 16 When the defendant says that to L.L., he's providing
10:04AM 17 her, he's soliciting her. He's providing her to Wayne, he's
10:04AM 18 soliciting her to go in the back and allow a man to stick his
10:04AM 19 fingers inside of her vagina in exchange for a thing of value,
10:04AM 20 money that he was gonna give her. He's literally describing
10:04AM 21 the element. Hey, go in the back with Wayne. Wayne will
10:04AM 22 stick his fingers in you. He'll give you extra, and Brian
10:04AM 23 will overlook the cameras.

10:04AM 24 That's the defendant providing, soliciting, L.L. And
10:04AM 25 that's just one example of when he did it to her.

1 Let's talk more in detail about G.R. When the
2 defendant brought her upstairs at a time when she described
3 for you what her life was like, heavily addicted to drugs,
4 provided her with cocaine, and then told her, go take care of
5 my friend, and I'll take care of you.

6 When he did that, and then sent her into a bathroom
7 to have sex with a stranger, he was providing her. He was
8 providing her to a stranger. He was enticing her, soliciting
9 her. Those are the words that are described in element 1.

10 And you've heard from multiple victims in this case,
11 the way that the defendant provided them, solicited them.

12 We can look at another example.

13 We can talk about K.L. We can talk about how K.L.
14 described the first time that she used Lortabs because she
15 told the defendant that she had a headache, and he gave her
16 Lortabs, opiate pain medication. How she became addicted to
17 those. And how one day when she was at work and she didn't
18 have any, and she was going through physical drug withdrawals,
19 how she went upstairs and told the defendant about that, and
20 how he told her, you know what you have to do.

21 When he said "you know what you have to do," this
22 defendant enticed K.L., the defendant obtained K.L., the
23 defendant patronized K.L.

24 How about recruited? Recruited is a word in the
25 statute. Think back to the heart-wrenching testimony from

1 L.L. about this defendant grooming her when she's new to the
2 club, telling her, hey, would you be willing to meet up with
3 men outside?

4 I submit to you that that is testimony of the
5 defendant recruiting L.L., whom he would later traffic.

6 So that covers the first element. You'll have the
7 charge, the judge will give you the law, you can look at all
8 those words -- obtain, provided -- I gave you some examples
9 and we're gonna talk now about the second element.

10 The defendant knew or was in reckless disregard of
11 the fact that force, threats of force, fraud, or coercion
12 would be used with respect to a victim.

13 First and most importantly, let's discuss coercion.
14 I expect that the judge is going to tell you that in part
15 coercion is a threat of serious harm.

16 Serious harm includes physical harm and nonphysical
17 harm. So let's look at physical harm first.

18 In this case, the serious physical harm, the threat
19 of serious physical harm, is the threat associated with drug
20 withdrawal sickness. You heard the testimony from the
21 victims. Many of them described, and we're going to go
22 through it in some detail in a moment, what it's like to
23 experience drug withdrawals. That's significant serious
24 physical harm. Vomiting, shaking, the flu times 10, or the
25 flu times 20.

1 Waving that power over someone is coercive. And
2 we'll talk more about it.

3 But serious harm can also be nonphysical, like
4 financial harm. In this case, financial harm includes the
5 defendant's ability to fire dancers. Like when he fired, I
6 submit to you he fired A.G. because she wouldn't go upstairs
7 and have sex with him. That's serious financial harm or the
8 threat of serious financial harm.

9 It includes the defendant's ability to control
10 whether a dancer gets called up on stage and how frequently,
11 controlling their ability to earn money.

12 It includes this defendant's power to prevent a
13 dancer from working elsewhere. And you heard testimony from
14 L.L. The defendant -- one time she said to him, hey, I'll
15 just go work somewhere else, and this defendant told you, no,
16 you won't. I can call anyone at any club, and say whatever I
17 want about you and they won't hire you.

18 You, you know, your recollection controls about
19 exactly what words she used, but the message that this
20 defendant conveyed to her was crystal clear, I can stop you
21 from being able to work somewhere else. And that's the threat
22 of serious financial harm. He made them entirely dependant
23 upon himself when he stopped them from working.

24 And you heard testimony from a few people about that.
25 P.H., K.L., C.C., they all described to you that when the

1 defendant began engaging in sex with them, he stopped them
2 from working as dancers. By doing that, he stopped them from
3 earning money. And when they don't have money, they can't go
4 get drugs anywhere else except from him.

5 And so by controlling whether the woman has the
6 ability to work at his club, he controls their financial
7 outcome. And when you exploit that, I suggest to you it's
8 coercion.

9 It makes sense that fear of physical withdrawal
10 symptoms is a form of serious harm. Think about the evidence,
11 the testimony that you heard. It painted as clear a picture
12 as possible of the hell of drug addiction. You heard what I
13 submit to you is consistent, compelling, and testimony that
14 you should find credible from numerous witnesses about the
15 desperation that's associated with drug addiction.

16 And we're not even going to start with a victim,
17 we'll start with Matt Albert. Matt Albert testified towards
18 the end of the trial. He was an attorney that was addicted to
19 cocaine and later crack cocaine. And I asked Matt Albert what
20 it's like that go through withdrawals and what it's like to be
21 a heavy drug addict.

22 And he was on cocaine, this is not opiates. He said
23 it takes hold of you, it's progressive, it takes over your
24 body and your mind, it's a painful process.

25 And what did he describe? He described crawling

1 around on the floor trying to smoke cat litter because he
2 thought it might be crack. That's the coercive power of
3 withdrawing from drugs, and that's cocaine.

4 P.H. described to you that withdrawing from opiates
5 is like having the flu times 20. She told you, quote, I would
6 do anything to avoid going through withdrawals.

7 P.H. testified, when you're going through
8 withdrawals, all you can think about and care about is getting
9 yourself unsick. It overcomes the person's world.

10 And you heard that from tons of witnesses in this
11 trial.

12 We'll keep going, K.A. K.A. described how at a time
13 in her life when she was spending 300 bucks a night on heroin
14 and coke working at Pharaoh's, her choices were driven by
15 addiction. She said she would go through severe withdrawals
16 if she didn't have enough money to buy her drugs. K.A.
17 testified that she would never have engaged in the sort of
18 conduct that happened to her in the VIP Room with Wayne
19 VanVleet today because she's not a drug addict anymore. It's
20 simple.

21 A.A. was spending between 6- and \$900 a day just to
22 feed her addiction and avoid withdrawals. She testified to
23 you that she, quote, did not feel like she had a choice.

24 She testified in a raw, and I submit to you,
25 authentic fashion, that today she views the conduct that

1 happened in the VIP Room as disgusting. She did it because
2 she, quote, would do anything for drugs at that time. She
3 told you she needed a minimum of two fentanyl patches to smoke
4 every day just to avoid getting sick, and those cost \$250
5 each.

6 R.W. testified to you about what drug addiction is
7 like. She said when you're addicted, addiction takes control
8 of your decisionmaking.

9 L.L. She testified about what physical withdrawals
10 from opiates are like. Here's what she said. Hot and cold
11 flashes. Really, really restless. Can't sit down, can't lay
12 down, can't get up. Aches and pains, diarrhea, throwing up,
13 can't eat. Like the flu times ten. She said withdrawals were
14 a lot worse than when she had COVID. She described it as a
15 sickness and a pain that she feared.

16 It was something that she testified that she wanted
17 to avoid at all costs. And I think this quote sums up that
18 testimony best: L.L. said, I would have done anything not to
19 feel that way, and that's what I did.

20 And the reason why we're here? The reason why we're
21 talking about this? Is because this defendant, he knew, he
22 knew the coercive power of drug addicts trying to avoid
23 withdrawals.

24 Think about the admission that he made to Kevin
25 Hughes in the context of having sex with women. He said,

1 quote, you'll be surprised what they do for a little bit of
2 product. His words.

3 Any doubt, based upon what you know about this
4 defendant, from the testimony you heard in that witness stand
5 that those words came out of his mouth waiting to come to this
6 trial? He knew. He did it on purpose. He preyed upon drug
7 addicts and their drug addictions so that he could get rich
8 off their bodies, so that he could get sexual gratification
9 for himself whenever he wanted it. That was this defendant's
10 choice.

11 What you learned about the drug-addicted women that
12 worked at Pharaoh's that were engaging in commercial sex
13 there, whether in the upstairs or in the VIP area, is that
14 they were susceptible and vulnerable to coercion because they
15 were drug addicts. These women were struggling with what
16 they've described to you in detail that I couldn't match about
17 the horror of that drug addiction, desperate for money,
18 desperate for drugs to stave off withdrawals for another few
19 hours. They were especially susceptible to coercion.

20 And thankfully, the law tells you that you can
21 consider the special vulnerabilities, the specifics of an
22 individual, the special vulnerabilities that exist. And I
23 submit to you that in this case, the victims were especially
24 vulnerable because they were heavily addicted to cocaine and
25 opiates.

1 The sex-trafficking conduct in this case falls into a
2 few different buckets, a few different categories.

3 The first bucket that we'll talk about is the
4 defendant directly coercing women to engage in commercial sex
5 upstairs.

6 The second is the business model in the downstairs
7 VIP area, knowing and recklessly disregarding the fact that
8 women would be coerced, and sometimes forced, to engage in sex
9 acts in the VIP with high-paying customers.

10 And the third bucket will be the defendant
11 coordinating with others like Darryl LaMont and Jessica
12 Leyland to essentially exchange women to traffic between their
13 companies.

14 Let's stay on that first category, the upstairs at
15 Pharaoh's.

16 We'll start with -- we'll start with G.R.

17 The defendant preyed upon G.R. during the darkest and
18 most vulnerable time in her life. And you saw her today. You
19 saw what she's like -- well, not today, but you saw her two
20 months ago. You saw what she's like now. But she described
21 for you what that time in her life was like when she was
22 heavily addicted to opiates.

23 Picture her for a second at that time. Thin, I think
24 she said she was 20 or 30 pounds less than she weighs today,
25 and I don't know where she would have that to lose, but she

described how heavily addicted she was.

When you have that picture in your mind, think now what choice did this defendant make when he was confronted with G.R. in that incredibly vulnerable time in her life? You want to talk about choices? Let's talk about his choices.

He doesn't choose to say, hey, G.R., why don't you go to drug addiction treatment? Go to rehab. I'll hold your job for you.

That's not what he did.

He doesn't choose to ignore her and leave her downstairs on the floor, dancing and getting high and whatever else she's doing. He doesn't choose to fire her and say, G.R., get out of the club you're a drug addict. No. What choice does this defendant make? He chooses to prey on her vulnerability to find a way to make it benefit him. That's what he was about.

Knowing G.R. was desperate, desperate for money, desperate for drugs, he brings her upstairs to his private area with his private guests, people he wants to impress. He gives her a taste, a little cocaine. And then he tells her, go in the bathroom with my buddy, take care of him, and I'll take care of you.

He didn't pick G.R. by accident. It wasn't eeny meeny miny moe downstairs at Pharaoh's. He picked her on purpose, because he knew she was a drug addict. She was

1 friends with the woman he was engaged in sex with at the time,
2 K.L., they were both heavily addicted, and you know he knew.

3 So he picks G.R. He offers her money to feed her
4 addiction. Money he knows she can't turn down. Take care of
5 my friend and I'll take care of you.

6 Now, you might hear something later after I sit down,
7 you might hear, oh, all they did was make her an offer. All
8 he did was make her an offer.

9 You know better. You know what he did was make her
10 an offer he knew she couldn't refuse. She had a \$350-a-day
11 drug habit. She was compelled, driven, coerced by this
12 defendant to have sex for money, something she had never done
13 before.

14 Over the course of a year, a \$350-a-day drug habit, I
15 used a calculator, \$127,000. That's how much G.R. was
16 spending approximately on drugs at that time in her life. He
17 knew exactly what would happen when he told her he would give
18 her drugs and money in exchange to go have sex with someone.
19 He knew she couldn't say no.

20 So for the first time in her life she does it.

21 Think about the coercive atmosphere that existed in
22 that moment. The defendant's her employer. This job is the
23 way she makes money to be able to buy \$127,000 worth of drugs
24 a year. The job that she has is the only means that she has
25 to make money to feed her addiction at that time, the only way

1 to stop from getting dope sick. And he controls whether she
2 keeps the job or not.

3 On top of that, in the back of her mind, she told you
4 is the fact that she thinks he has mob ties. Those were her
5 words. And I suggest to you that that adds to the coercive
6 atmosphere. All that matters is that it was in her head at
7 the time. She told you, heavily addicted to drugs, upstairs
8 in this private area with a locked door that he controls.

9 All of that combined together created a coercive
10 atmosphere that G.R. couldn't overcome. And whose fault is
11 it? It's his fault. It was his choice. He set it up that
12 way on purpose.

13 And G.R.'s corroborated. K.L. testified that after
14 that happened, the defendant told her about it. He told her,
15 I gave K.L. -- I gave G.R. \$300 to have sex with Aaron
16 LaMarca's son, or whoever it was, she described the person,
17 someone he wanted to impress.

18 While we're on the subject of K.L., let's talk about
19 what he did to her. 'Cuz, you know, the defendant didn't just
20 oversee this, he didn't just direct dancers to go and engage
21 in commercial sex with others, he got his hands dirtier than
22 that. Let's talk about K.L. and his choices with respect to
23 K.L.

24 This defendant chose to give K.L. opiates for the
25 first time when she said she had a headache. He didn't have

1 to do that. His choice.

2 This defendant chose when K.L. was dependant on those
3 drugs, when she was addicted to them, when she got physically
4 sick, the flu times 10, the flu times 20, any time she didn't
5 have those drugs, what did this defendant choose to do when
6 she would come upstairs and ask for them? When she went
7 upstairs and she said, hey, I'm going through withdrawals, can
8 I get some Lortabs, what was this defendant's choice?

9 Did he give them away? Sure, K.L., here's some
10 Lortabs go back downstairs. No.

11 Did he tell her, hey, K.L., you should go to rehab,
12 get some treatment. Opiate addiction is dangerous. You're
13 gonna mess your life up. No.

14 The defendant's choice was to tell K.L., you know
15 what you have to do. And then zipped down his pants and put
16 his penis in her mouth. That was his choice, not hers. No
17 one else's, Peter Gerace's choice, when K.L. was heavily
18 addicted, scared of withdrawals, was to try to get a blow job
19 out of it for himself. And that's what he got, because she
20 wasn't gonna say no.

21 Do any of you sitting there for a second think that
22 K.L. in that moment, fiending -- fearing physical withdrawals,
23 had a choice of turning down putting his penis in her mouth?
24 No.

25 What you have to do. His words.

1 Imagine for a second -- excuse me. Imagine for a
2 second that K.L. wasn't a drug addict. Just follow me for a
3 second. Imagine K.L.'s not a drug addict and she's a
4 diabetic. And imagine she doesn't work at a strip club, she
5 works at, you know, an office job. Imagine she's at work, and
6 she's going through diabetic shock. She starts to feel the
7 symptoms, she's dizzy, she nauseous, she feels like she's
8 going to lose consciousness. She's scared. And in that
9 moment, imagine she thinks to herself, I know my boss Peter
10 has insulin upstairs. And she walks upstairs, diabetic K.L.,
11 and she says, hey, Peter, I'm going through diabetic shock,
12 I'm scared, I feel dizzy, I'm nauseous, I think I might pass
13 out. Can I have some of your insulin?

14 And imagine in that moment that her boss said, you
15 know what you have to do, and then stuck his penis in her
16 mouth. That's coercion. That's conduct that would turn your
17 stomach. And it's no different than what he did.

18 I submit to you it makes no difference if she's
19 physically dependant on opiates, or if she's physically
20 dependant on insulin.

21 If you know that that's what's happening to a person,
22 and then you choose to withhold what they need to avoid going
23 through serious harm so that you can get a blow job, that's
24 coercion.

25 He preyed upon K.L.'s drug addiction the same way he

1 preyed upon G.R.'s. And like I talked about how K.L.

2 corroborated what happened to G.R., K.L. is corroborated by

3 what happened to L.L., years apart. Years apart. This

4 defendant engaged in essentially the exact same contact with

5 L.L. Let's talk about that.

6 L.L. described for you in raw detail how she engaged

7 in sex and sex acts in exchange for cocaine, and opiates, and

8 money, and the combination of all that with this defendant,

9 and his friends, one of his brothers. She described for you

10 that that was at a time in her life when she was heavily

11 addicted to heroin and cocaine, at a time when she was

12 terrified of the pain of withdrawing from those substances, at

13 a time in her life when she told you she would've done

14 anything to avoid that.

15 What choice did Peter Gerace make? He chose to tell

16 her, you know what I need, a special favor. When she's

17 fiending for drugs, when she's going through withdrawals.

18 That's his MO. He did the exact same thing to K.L. No

19 discussion.

20 The first time -- think about K.L. described for you

21 the first time it happened. She told you she went upstairs,

22 he gave her cocaine, and with no words at all he pulled his

23 pants down. And she testified that she knew what she had to

24 do in that moment.

25 Weeks later, L.L. got on the witness stand and she

described the first time that it happened with this defendant.
And what did she tell you? The exact same thing. Years
apart, that happened.

He gives her cocaine. With no words, with no
discussion, he pulls his pants down. L.L. knew in that moment
exactly what she had to do.

The defendant gave her the drugs she needed, and he
had sex with her.

In the co -- in the coercive atmosphere that he
created, he was her boss, he controlled her ability to earn a
living. And that was just the first time. L.L. would go on
to describe other occasions which she said were, quote, too
many times to count, where she would be dope sick and she
would go to him at work and ask for drugs. And the defendant
would tell her, you have to give me a special favor. And he
would make her suck on his penis, or he would put his penis in
her vagina in exchange for the drugs.

She testified to you, she showed you in this
courtroom the physical effects of shooting heroin and cocaine
into her arms and legs so many times her veins literally
collapsed.

She goes up there and asks him for drugs, and what
choice does he make? He chooses to brutally victimize her, to
treat her like she was property, to treat her like she was
less than human.

1 And the defendant didn't just do it himself with
2 L.L., he sent her upstairs with his friends and his brother.
3 And how do you think they knew? Let's talk about that.

4 You think Aaron LaMarca and David Gerace, his
5 brother, just picked L.L.'s name out of a hat to say, hey,
6 want to go upstairs and party? I'll give you some drugs.

7 Of course not. He told them.

8 He told them if you give L.L. some drugs, you can
9 make her have sex with you. I submit to you that's an obvious
10 inference you should draw. They weren't randomly selecting
11 dancers and getting lucky. This defendant, who had already
12 been doing it himself, passed her off, he pimped her out. It
13 doesn't matter if it happens on a street corner, in a crack
14 house, or in a club with a neon sign. He pimped her out to
15 his friends, he pimped her out to his brother, he pimped her
16 out to himself. That's the choice he made.

17 **MR. COOPER:** Do you have time?

18 **MR. TRIPI:** 43 left.

19 **MR. COOPER:** Okay.

20 And let's talk about when the defendant doesn't get
21 what he wants. You have to look no further than the testimony
22 of A.G. She wasn't addicted to heroin or crack. She was
23 working at Pharaoh's for two days. She was making a ton of
24 money, she told you guys she seemed -- she said I was a
25 ringer, I did 13 Champagne Rooms in one night, made a ton of

1 money.

2 The second day she works there, this defendant goes
3 over to her and says, hey, Barbie, I heard you're doing great,
4 you're killing it. She's like, thanks. He tries to get her
5 to drink, she's underage. She says no. He tries again. She
6 continues to say no.

7 And then later he goes over to Barbie, A.G., and he
8 has two women with him, and he says, hey, Barbie, let's go
9 upstairs and party.

10 You remember her. She was short. She said, no, I'm
11 good. She had, like, a mousy little voice. No, I'm good.

12 And he offers her again, hey, why don't we go
13 upstairs and party? No, I'm good.

14 What happened to A.G.? She shows up for work day
15 three. She's met at the door. You're fired.

16 Every single one of you sitting in this room knows
17 what happened there.

18 She's making the club a lot of money, she's doing
19 great, she's not a drug user. She certainly wasn't fired for
20 drug use. He tries to invite her upstairs, which she
21 described as I thought he was going to give me drugs and try
22 to have sex with me, and I didn't want to have anything to do
23 with that, and the next day she's gone. That's the coercive
24 power of being the boss.

25 Let's talk about the VIP Room sex trafficking. The

1 defendant set up his business to profit off of the
2 victimization of drug-addicted dancers, plain and simple. He
3 knew and he recklessly disregarded the fact that women were
4 coerced with their drug addictions to engage in commercial sex
5 in the VIP Room, and he got rich from it. Let's cover all the
6 different evidence, all of the testimony.

7 G.R. said in the VIP Room men would touch her vagina
8 and kiss her body. She said she observed another dancer
9 having sexual intercourse in the back. She said on one
10 occasion while in the VIP Room a man masturbated and
11 ejaculated on her while she was dancing on him, no one
12 intervened, no one stopped that, she told you the club made a
13 lot of money from VIP dances.

14 C.B. told you sex acts occurred in the VIP area, and
15 depending on who the dancers were, some of them would get away
16 with it. That's consistent with what you heard from numerous
17 witnesses about Peter having Peter's favorites. A.B. also
18 told you about that.

19 E.H. described for you how the instructions she got
20 when she started working at Pharaoh's were grind on him until
21 he gets off. She testified -- testified about what happened
22 to her when she worked there. You remember, I'm sure, she
23 said that a man ejaculated on her and she was angry. She was
24 angry about it when it happened. And I think she was still
25 angry about it when she was testifying about it here, and she

1 was pissed.

2 And she said she went outside to the VIP attendant
3 and she said, hey, look at the cameras. Find out who that
4 was. She's got his semen on her body, and that's not what she
5 signed up for.

6 And they didn't care. They tell -- they tell her go
7 away.

8 For this defendant, that's the business model. What
9 kind of customer service would it be to go get the guy in
10 trouble? Come on, he's spending money here. That's how he
11 set it up.

12 E.H. put it pretty well. She said I worked at
13 Pharaoh's, they protect the patrons, not the girls, not the
14 women, is what she said.

15 For this defendant, that kind of conduct was a way
16 for him to live in a nice fancy mansion, and buy sports
17 memorabilia, and have cash on hand to pay bribes to judges and
18 corrupt DEA agents. Business model.

19 K.A. told you about her experiences in the VIP area.
20 She described that men touched her bare vagina, tried to and
21 did insert fingers into her bare vagina, and exposed their
22 penises to her.

23 She described her encounters with Wayne VanVleet.
24 She described them as, quote, too many to count. She said
25 Wayne came into Pharaoh's multiple times per week, he spent a

1 lot of money.

2 And you know that money ended up in this defendant's
3 pockets.

4 Wayne would buy large blocks of time in the VIP. He
5 would tip the attendant extra. This is all what K.A.
6 described in her testimony. And then he would attempt to
7 finger her and touch her bare vagina.

8 She explained in graphic detail how Wayne would,
9 quote, force -- force, where have we heard that before, force
10 her body down on his erect penis until he ejaculated on
11 himself.

12 K.A. testified that she didn't enjoy what was
13 happening in the back with Wayne, but she needed the money in
14 order to buy heroin that she was heavily addicted to. She
15 testified she was high on cocaine and heroin every single time
16 Wayne did that to her in the back.

17 She testified to you that she was covered in track
18 marks, those bruises, those collapsing veins in her body from
19 drug use. It was obvious that she was addicted to drugs. It
20 was recklessly disregarded. No one cared. She was making
21 money, that's all that mattered.

22 K.A. testified that it didn't just happen to her,
23 other dancers were brought back there with Wayne. All drug
24 addicts, every one of them that K.A. described. L.L., Kiera.
25 She told you they're drug addicts just like her.

1 He knew. This defendant knew, the VIP attendant's
2 getting tipped to look the other way. They knew.

3 Wayne VanVleet, up close and personal with a woman
4 who's obviously heavily addicted to drugs, he knew. They're
5 all coconspirators. They're all victimizing this young woman.

6 Wayne pays, this defendant gets a portion of the
7 money, and K.A. she gets molested, and she gets to live with
8 it forever. That's the business model.

9 It's not just her. Let's talk about A.A.

10 Do you remember Ms. A.A.? When I was direct -- doing
11 a direct examination of Ms. A.A., we had this picture up and I
12 started to ask her questions about it, and she paused and she
13 said, can you please take the picture down? She couldn't even
14 look at him. Who can blame her?

15 She testified about being so strung out, thin, dark
16 eyes, hollow faced. She described how Wayne was a regular, he
17 spent a lot of money in the VIP Room. She told you that Wayne
18 would tip the VIP attendant, and then he would buy long blocks
19 of time in that dark private area with her. She testified
20 that Wayne would use force, the same thing that K.A. said,
21 Wayne would use force to hold her body in place and try to rub
22 her vagina.

23 She testified that the VIP attendants never once
24 stopped him from doing that. She testified that they looked
25 the other way.

Ms. A.A. told you that Wayne's other favorites in the club were L.L. and Megan. Same thing, I submit to you, that K.A. told you. Megan Stabler is a/k/a Kiera, it's her dancer name, it's corroboration. I submit to you that she told you L.L. and Kiera, Megan, were -- were both drug addicts, as well.

She provided what I submit to you is impactful, credible, and heartbreaking testimony that she didn't feel like she had a choice.

She described another customer who inserted his fingers into her vagina, and you'll remember I'm sure that testimony. She said, I kept looking to the cameras. I kept looking to the cameras for help when that was happening, but no one came.

She described how VIP attendants would encourage me to go to certain customers, just like this defendant did, by the way, with L.L. for Wayne. Business model. They would encourage her to go to certain customers.

And here's what she said, and then they would come looking for a bigger tip afterwards. Disgusting. Predatory business model designed to make money off of the molestation of drug-addicted women.

And C.H. corroborated all this. She testified that she would see Wayne VanVleet lick dancers' faces and grab them. She would see him tipping off the VIP attendants. And

1 you know exactly what those tips were for.

2 You know the defendant knew what was happening. And
3 that's important. You know he recklessly disregarded it at a
4 minimum, but you know he knew 'cuz he told L.L., he told her
5 what was gonna happen with Wayne, and he said Brian will look
6 the other way, all part of an agreement to get rich off these
7 women. Kept whales like Wayne spending money at the club.

8 A.B. She testified that she observed sex acts in the
9 VIP area, and she described dancers that were engaging in
10 those sex acts as Peter's favorites. Huh, I wonder what made
11 them Peter's favorites? You know.

12 She told you that the same dancers that would tip the
13 VIP attendants and managers, those same dancers would tip them
14 extra money, the VIP attendants and the managers.

15 Ms. A.B. also testified that this defendant, Peter
16 Gerace, he would direct dancers to his friends or big spenders
17 in the VIP area. That's his role in the sex-trafficking
18 conspiracy. He directed it to happen, because it made him a
19 lot of money.

20 If you remember when Ms. A.B. was being
21 cross-examined, they tried to suggest to her, like, hey, Brian
22 was supposed to, like, be watching the cameras, he was gonna
23 stop that if it happened. And she said, just because he was
24 responsible for something doesn't mean he actually followed
25 through with it. Brian looked the other way for tips.

1 She wasn't gonna get told what to say. She lived it.
2 You know that's how this defendant set up his business model.
3 Ms. A.B. told you.

4 This was really, I submit to you, this is really
5 crucial testimony. A.B. told you that in conversations with
6 this defendant, he would refer to the VIP Room as "the bank."
7 The bank. The bank.

8 So, sure, at his trial, they can come up here and
9 say, oh, alcohol sales, guys. Making money selling drinks.

10 But outside the courtroom? Before the indictment,
11 talking to A.B., he tells her the VIP Room is the bank.

12 L.L., in addition to K.A. and A.A., L.L., she offered
13 you direct evidence, direct proof that this defendant knew
14 what was going on in the back with Wayne and others.

15 All the sex trafficking that we just discussed was
16 part of a larger conspiracy, a larger agreement between more
17 than one person, right, two or more people, an agreement to
18 engage in that conduct.

19 The law doesn't require that we identify all the
20 coconspirators to you. The judge will teach you that. But
21 let's discuss for a minute some of other people that were
22 involved in this agreement to commit sex trafficking, to
23 coerce women to have sex in exchange for a thing of value,
24 drugs and money.

25 The defendant conspired with Wayne VanVleet. Whether

1 they ever talked to each other or not, doesn't matter. The
2 judge will tell you they don't need to know each other.
3 They're working together for the same purpose. Wayne's
4 getting something out of it, Peter's getting something out of
5 it.

6 The defendant conspired with Brian Rosenthal and
7 other VIP attendants who took what amount to bribes to look
8 the other way while men like Wayne VanVleet fingered and
9 molested drug-addicted women in the VIP Room.

10 The defendant conspired with johns, the consumers of
11 the commercial sex that he got rich selling.

12 He conspired with drug dealers that supplied the
13 addicted dancers with the drugs, because without them, the
14 sex-trafficking business was going to grind to a halt. So the
15 drug dealers are all a part of this conspiracy.

16 And then we get -- let's go -- let's go to Doug
17 Augustyniak for a second. Do you remember Doug?

18 I submit to you it was pretty clear from the minute
19 that I started asking him questions that Doug was a hostile
20 witness. Doug, who was -- worked as a VIP attendant, who's
21 good friends with Brian Rosenthal and with this defendant.
22 Doug had something to hide.

23 When Mr. Foti started asking him questions, Doug was
24 a sweet baby angel. Do you remember? They didn't have any
25 trouble. Doug was doing great on cross-examination. When I

1 was up there asking questions, Doug was aggressive. And it
2 should be no surprise to you, he blurted out during the direct
3 examination that he didn't like me and the government. I
4 don't care. What matters is that Doug testified to you about
5 something that I think, I submit to you, you should find
6 credible.

7 He was locked in in grand jury, and Doug Augustyniak
8 came in here and he told you that when a dancer was overdosing
9 downstairs, after she had been upstairs in this defendant's
10 private area partying with him and his friends, she came
11 downstairs and she overdosed. And what did he tell you? He
12 didn't call 911. He didn't call the police while this woman
13 was in medical distress.

14 Who did he call? His coconspirator, Peter.

15 Doug didn't want the police coming. I submit to you
16 Doug didn't want the police sniffing around the club. The
17 club, the drug dealing, the sex trafficking, that was how this
18 defendant and Doug and Brian made a living. He tried to look
19 you in the face and say I tried to prevent sex acts from
20 happening in the VIP area.

21 You know better. When you consider whether that
22 testimony was credible, consider in comparison to the
23 testimony from the witness after witness the victims who came
24 in here and described the disgusting things that happened to
25 them. Doug had something to hide.

1 Do you think Doug wants to come in here and say,
2 yeah, I looked the other way in exchange for money? Totally.

3 Doug wasn't just ignoring it, Doug was profiting from
4 it. He told you customers like Wayne would come in and, oh,
5 yeah, they'd give us tips, they'd give us tips. Sure.

6 Well, Doug, what were they giving you a tip for?

7 Doug wasn't going in the back. Wayne wasn't licking
8 Doug's face. He wasn't rubbing Doug's groin. He wasn't
9 ejaculating on Doug. So why is Doug getting a tip? Hmm, I
10 wonder. Maybe it's consistent with the testimony of all the
11 victims that testified that Doug was getting tipped so he'd
12 let it happen.

13 So whether he comes in here and admits it or not, you
14 know what happened. Doug was getting a cut.

15 His demeanor, his attitude on the witness stand, tell
16 you everything you need to know about him. To Doug, the
17 victims in this case are a dime a dozen.

18 When I asked him to describe the woman who was
19 overdosing, like, you know, I was -- what I meant was like
20 describe the symptoms. I said, hey, describe her. He said
21 oh, I don't know, it was just some girl.

22 Just some girl. That's what -- that's what the
23 victim who's overdosing is to Doug. That's how he thinks. A
24 dime a dozen. Couldn't care less about what happened to them
25 in the VIP Room. All he cared about was the money that was

1 coming in.

2 And think about who he's loyal to. Don Parrino fired
3 Doug. And who brought him back? Peter.

4 If the argument is made to you, if the argument gets
5 made to you today, or what do you expect, come on, they're
6 strippers, listen real carefully when Judge Vilardo instructs
7 you on the law. Listen carefully. I submit to you he's not
8 gonna say, hey, it's okay to coerce a woman into commercial
9 sex if she's a stripper. Who cares?

10 Not the law in this country. Reject that argument if
11 it's made to you.

12 The facts provided to you by the dozens of witnesses
13 who lived it, the victims who still live it, prove that
14 Pharaoh's wasn't a strip club, it was a brothel with a neon
15 sign and a liquor license.

16 The defendant isn't some persecuted business owner.
17 Like Rebecca Bender told you, he's a CEO pimp and a Romeo
18 pimp, it doesn't matter that he doesn't wear a purple jacket
19 or a fur hat.

20 That's not in the law.

21 The same rule of laws apply to everyone in this
22 country. Doesn't matter where you're from, doesn't matter if
23 you have a corrupt DEA agent friend who thinks he can create a
24 two-tiered system of justice for you. The same rules of law
25 apply to everyone.

1 The fact that the defendant hung out with lawyers and
2 judges and cops, who cares? He cared. I submit to you, you
3 shouldn't. It doesn't change the facts.

4 Doing coke with Buffalo Sabres in the upstairs at
5 your club doesn't mean you're not engaged in sex trafficking
6 because the people might be famous. That's not in the law.

7 Listen carefully when he gives you the law, apply the
8 facts as you decide them, and employ a simple formula: The
9 facts plus the law equals the verdict. That's it.

10 I don't think we need to spend too much more time on
11 this, the third element, we've covered coercion in detail.
12 Commercial sex act, doesn't have to be vaginal intercourse,
13 right? Sticking your fingers inside of a woman's anus or
14 vagina, kissing a woman's bare breasts, rubbing a woman's
15 vagina, all commercial sex acts in this case. It doesn't have
16 to be the oral sex or vaginal sex that you've heard described.
17 And those things happened in the VIP Room. But even the
18 rubbing of a woman's bare vagina, that's a commercial sex act
19 in the context of this case.

20 Ejaculating on a woman's body when she's dancing is a
21 sex act. They're all done in exchange for a thing of value.

22 So that third element, commercial sex act, check.

23 The fourth element, interstate or foreign commerce, I
24 expect the judge is gonna tell you that's de minimis, you just
25 have to find that there's some -- some hook to interstate,

1 some interstate nexus. Did the act -- did the activity have a
2 minimal effect on interstate commerce? Of course it did.
3 They're selling alcohol. The alcohol is not all made in
4 New York, right? They have a website. The website effects
5 interstate commerce.

6 Maybe most importantly, they bring dancers in from
7 all over. You heard multiple witnesses testify to that.
8 Dancers come from other states, they come from Canada. That
9 effects interstate or foreign commerce.

10 And finally, drugs. You know by now drugs are an
11 integral part of that business, an integral part of the way he
12 ran that business. And cocaine doesn't come from New York.
13 Heroin doesn't come from New York. No one's growing heroin in
14 their backyard, poppy, whatever, that's not happening. Those
15 are things that effect interstate commerce.

16 So that one, you know, fourth element, check.

17 It was also, this was spurred on by people like
18 Darryl LaMont and Jessica Leyland, so that's part of the
19 conspiracy. You don't have to find -- you pick how, you know,
20 how the conspiracy existed. You pick who was involved. But I
21 submit to you that Darryl LaMont and Jessica Leyland, when
22 they trafficked woman back and forth with Pharaoh's, were
23 engaged in that same conspiracy. They all knew.

24 This defendant, he knew what was going on at Darryl
25 LaMont's company. You know he knew. There's evidence of his

1 knowledge that sex acts were going on. You heard it from R.W.
2 that there's evidence of it.

3 So first we have pictures, right? Who are some of
4 the people in common? Shelby on the left, who this defendant
5 trafficked to Judge Michalski, his buddy, so that the judge
6 would be corrupt for him.

7 Look at these text messages. They're a little bit
8 distorted here. 310AS. Peter says to Darryl LaMont, you took
9 one of my best weekend girls -- because they shared
10 employees -- and LaMont tells him, yeah, and she does anal.

11 Any question about whether the defendant knew LaMont
12 was having the women engage in sex acts? Any doubt? No.

13 Jessica Leyland. Katrina Nigro told you Jessica
14 Leyland had an arrangement with the defendant. She would send
15 the women from Extraordinaire, her stag company, to Pharaoh's
16 to work, and the defendant would let her sell drugs there.
17 That's part of the agreement, they both have a stake. She's a
18 member of the sex-trafficking conspiracy.

19 So three buckets of that activity, we covered all of
20 three of them. Upstairs, VIP area, and the -- the exchanging
21 of women with -- with those other stag companies that we
22 discussed. I submit to you all three buckets in this case
23 have been proven to exist, proven beyond a reasonable doubt.

24 But even if you find only that the upstairs was sex
25 trafficking, still guilty. Even if you find, hey, only the

1 downstairs VIP area where -- where there was force, where
2 Wayne was physically forcing women onto his erect penis, still
3 sex trafficking, still a sex-trafficking conspiracy.

4 So I've presented three buckets to you. You pick any
5 or all of them, I submit to you they've all been proven beyond
6 a reasonable doubt.

7 Conspiracy to commit sex trafficking by coercion, the
8 second bucket of proof in this case, find him guilty of
9 Count 5 because his choices, over and over again, the choices
10 he made make him guilty of Count 5.

11 **MR. COOPER:** Judge, I think it's a good time to take
12 that break, please.

13 **THE COURT:** Okay, folks, we'll take our mid-morning
14 break now. Please remember my instructions. Don't talk about
15 the case, even with each other, and don't make up your mind
16 just yet. Come back at 11:00 and we'll continue.

17 (Jury excused at 10:52 a.m.)

18 **THE COURT:** Okay. Anything for the record before we
19 break?

20 **MR. COOPER:** No, thank you.

21 **MR. FOTI:** No, thank you.

22 **THE COURT:** I've got you at 1:40.

23 **MR. COOPER:** That's what Joe has also.

24 **MR. TRIPI:** Yeah, 1 hour and 20 remain, yep.

25 **THE COURT:** 1 hour and 20 remain. Yeah, great.

1 Thank you. We'll be back -- let's try keep it close to 11:00,
2 please.

3 **MR. COOPER:** Perfect.

4 **THE CLERK:** All rise.

5 (Off the record at 10:53 a.m.)

6 (Back on the record at 11:02 a.m.)

7 (Jury not present.)

8 **THE CLERK:** All rise.

9 **THE COURT:** Please be seated.

10 **THE CLERK:** We are back on the record for the
11 continuation of the jury trial in case numbers 19-cr-227 and
12 23-cr-37, United States of America versus Peter Gerace Jr.

13 All counsel and parties are present.

14 **THE COURT:** Okay. Ready to go?

15 **MR. COOPER:** Yes.

16 **THE COURT:** Ready to go?

17 **MR. FOTI:** Yes.

18 **THE COURT:** Okay. Can we let Pat know?

19 We're ready, Pat.

20 **OFFICER CORONA:** Very good.

21 (Jury seated at 11:07 a.m.)

22 **THE COURT:** The record will reflect that all our
23 jurors, again, are present. You may continue.

24 **MR. COOPER:** Thanks, Judge.

25 So, one last thing to keep in mind that I forgot, and

1 we have a lot to talk about so I'm going to try to hit it
2 quick, but on the topic of maintaining a drug-involved
3 premises and sex trafficking. I didn't talk at all about
4 nodding out. And you heard so many witnesses talk about
5 nodding out at the club.

6 And a bunch of different witnesses testified to you
7 that they themselves would nod out all over the place: On the
8 floor, at the bar, in the dancing dressing room, in the VIP
9 area. It was happening all over the place. And so that's
10 just one final point I wanted to make sure I hit with you on
11 how you know that he knew that drugs were being used
12 everywhere all the time, because dancers were constantly
13 nodding out. It's another way that you know the defendant
14 knew that these women were heavy drug addicts at the time that
15 he was running his business.

16 And now we're on to the next category. We're right
17 on schedule. We're going to talk about public corruption.

18 Count 1, like I told you earlier, is that conspiracy
19 to defraud the United States. It charges the defendant with
20 conspiring with Joseph Bongiovanni to defraud the United
21 States between 2005 and February of 2019. We're going to talk
22 about the elements of Count 1 now.

23 First, you're getting good at conspiracy by now I
24 bet, that two or more persons entered an unlawful agreement
25 charged in the indictment;

1 Second, that the defendant knowingly and willfully
2 became a member of that conspiracy;

3 This count has a third element that one of the
4 members of the conspiracy knowingly committed at least one
5 overt act charged in the indictment; and

6 Fourth, that the overt act that you find to have been
7 committed was committed to further some objective of the
8 conspiracy.

9 Those are the four elements for Count 1.

10 The first element, that two or more persons entered
11 the unlawful agreement charged in the indictment.

12 First thing we're gonna do is identify what is the
13 unlawful agreement charged in the indictment. I'm going to
14 summarize it because the indictment is huge, we're not going
15 to waste time.

16 In sum, it's the unlawful agreement between former
17 Special Agent Joseph Bongiovanni and Peter Gerace to have
18 Bongiovanni be corrupt. That's the agreement. To have
19 Bongiovanni protect Peter Gerace from law enforcement
20 investigation, to shelter him from other law enforcement
21 officers, and their illegitimate action.

22 I submit to you that the corrupt agreement was
23 designed on purpose to create a two-tiered system of justice,
24 one for everyone else, and one for this defendant. It was a
25 mutual understanding, spoken or unspoken, between Peter Gerace

1 and Joe Bongiovanni.

2 Let's talk about how we've proven that.

3 First, let's look at the relationship that we know
4 they have, that you know they have, based upon the testimony
5 and the evidence. They were incredibly close to each other.

6 Lou Selva told you that they grew up together, that
7 they were friends since they were teenagers. They bar tended
8 together in their early 20s. You know that Bongiovanni grew
9 up in a -- in a neighborhood where he and Lou Selva described
10 having an affinity looking up to people that they thought were
11 in Italian Organized Crime. And you know that -- you've heard
12 testimony that this defendant and his family have a reputation
13 for being associated with that.

14 And that's important only because it's a reason why
15 Bongiovanni had a -- had a reason to want to look out for
16 Peter Gerace. That's why that's being offered to you.

17 Let's think about the testimony of M.U. She was
18 Bongiovanni's fiancée back from 2005 to 2009. She was witness
19 number 1 at the trial. So we're going to pull out the board
20 here, that was M.U., if anybody needs to see what she looked
21 like.

22 And M.U. came in here day 1 of testimony, and she
23 told you that from 2005 to 2009, she was in a relationship
24 with Joe Bongiovanni. She said that he introduced her towards
25 the beginning of their relationship -- so we're all the way

1 back in '05 -- he introduced her to his good friend, Peter
2 Gerace. She told you that -- about the things that they would
3 do together. They went on double dates together. They went
4 on trips to Niagara on the Lake together. They took carriage
5 rides together, Peter Gerace and Joe Bongiovanni, all the way
6 back in '05.

7 And M.U. also offered you some significant testimony
8 about how Bongiovanni told her during their relationship that
9 he felt conflicted. He felt conflicted between the guys he
10 grew up with and his job as a DEA special agent. That
11 conflict that Bongiovanni described to M.U., I suggest to you,
12 that it's proof that all the way back in 2005 there was a
13 struggle going on in Joe Bongiovanni's mind.

14 The proof, the evidence at this case, shows you that
15 he lost that struggle, and the people of Western New York
16 suffered because of it. Bongiovanni became corrupt. And part
17 of his corruption involved protecting this defendant.

18 Let's stay on the relationship for a sec. It wasn't
19 just 2005 to 2009.

20 T.O., this defendant's former fiancée --

21 If we can zoom in, Ms. Champoux, on just these four
22 people here.

23 -- T.O. told you about a 2011 trip to Las Vegas
24 together. And here they are, Peter and Joe Bongiovanni, on a
25 prearranged vacation to Las Vegas together.

1 In 2018, 13 years after 2005 when M.U.'s talking to
2 you, 2018, here they are, thick as thieves, right next to each
3 other in the picture. Peter Gerace, Joe Bongiovanni, P.H., at
4 the time with Peter, and Lindsay, Bongiovanni's now wife.

5 It's a friendship that never wavered. And if a
6 picture speaks a thousand words, hopefully those pictures can
7 save us some time on the summation here.

8 Let's go to the text messages to see how close they
9 were.

10 Ms. Champoux, can we pull up some of the text
11 messages from 310D?

12 These are this defendant's text messages with
13 Bongiovanni.

14 Peter Gerace: We need to get together soon.

15 Bongiovanni: I know, bro. Maybe lunch soon. Miss
16 you, bro. Just get better, bro. I'll pick you up in the old
17 Buick and we'll hang out. That's Bongiovanni.

18 Peter: Love to. Thanks. Thanks for the note.

19 Joe: Always there for you. Love you, bro. Sorry
20 I've been crazy busy. I owe you clams casino we'll get them
21 soon. Bongiovanni says, hey, we've been friends for 25 years,
22 all good.

23 And this defendant says: You mean 36 years.

24 Now, that's fun. We'll get there in a minute. But
25 that's in 2018 at a time when Bongiovanni is now starting to

1 try to distance himself from this defendant because he
2 realizes it's coming under scrutiny, and all of a sudden he's
3 saying look, we've been friends for 25 years, and this
4 defendant's like no, 36 years we've been friends. That's the
5 relationship that existed between those two people.

6 I expect that when the judge tells you the law, so
7 that -- that was just setting the stage for the unlawful
8 agreement, the relationship is the background. But when the
9 judge instructs you on the law, I expect he's going to tell
10 you that with respect to conspiracy, actions speak louder than
11 words, right?

12 Let's talk about the actions of both of those
13 individuals, Joe Bongiovanni and this defendant, that prove to
14 you that they were involved in an unlawful agreement together.

15 It starts back in 2005 with the search warrant at
16 Craig Border's residence. And what do we know was happening
17 in 2005? Bongiovanni's close with Peter Gerace, double dates,
18 they're in a close friendship.

19 Craig Border, he told you he was a drug dealer, and
20 earlier in the year in '05 he had been dating R.A., Peter
21 Gerace's then girlfriend.

22 Craig Border told you he had some intimate photos of
23 R.A. in a Playboy Bunny outfit in his house. He was a weed
24 dealer. And on December 1st, 2005, the DEA shows up at his
25 house to execute a search warrant. And you learn from

1 Exhibit 11A --

2 And we can just zoom in, Ms. Champoux, on box 9 and
3 10 there? Thank you.

4 -- who was present for the execution of the search
5 warrant at Craig Border's house? Joe Bongiovanni.

6 And on December 1st, 2005, when that search is
7 executed, you learn that Craig Border goes back to his
8 apartment, and the intimate photos of R.A. in a Playboy Bunny
9 outfit are gone.

10 I mean, you can use your common sense. They didn't
11 have evidentiary value in a marijuana-trafficking case. You
12 know why they were taken. You'll -- we'll talk about that in
13 a minute.

14 R.A. came in here, though, and she talked to you
15 about this. And I submit to you that Ms. R.A. had no interest
16 in helping the government at all. That was apparent from the
17 way she acted on the witness stand when Mr. Tripi asked her
18 questions. She wanted nothing to do with being present at
19 this trial or providing testimony that could in any way
20 incriminate that defendant.

21 She told you he's her child's father. I suggest to
22 you, you can see it for what it is.

23 But what did she tell us? Why did we call her?

24 She told you that she was having an argument with the
25 defendant, and he told her that his friend Joe Bongiovanni had

1 seen photos of her at Craig Border's residence. This
2 defendant said to her, my friend Joe is a DEA agent, and he
3 did a raid at some guy's house, and he found pictures of you.
4 Those were her words that she described what he said to her
5 back in 2005.

6 R.A. begrudgingly admitted that the defendant told
7 her that Bongiovanni had even shown him the sensitive
8 photographs that he recovered from Craig Border's apartment,
9 things that he seized from a search warrant for no legitimate
10 law-enforcement purpose.

11 What law enforcement officers see, what they see when
12 they go in someone's home because a judge authorizes them to
13 search for evidence of criminal activity, that's
14 law-enforcement sensitive information. They don't go run
15 around and tell their wife or their friends, hey, you're not
16 gonna believe what I found in John Smith's house. They have
17 an obligation, a duty, to keep that private.

18 But what did Joe Bongiovanni do? He tells his
19 friend, Peter Gerace, hey, I saw these pictures of RuthAnn.
20 He shows them to him.

21 And what do we know from the evidence at this case?
22 We know that Bongiovanni knew what R.A. looked like.

23 Let's go to the two photos, or the front and back of
24 the photo that M.U. provided us.

25 And if you can zoom in, Ms. Champoux, on this area

1 thank you.

2 2005/07/21, that's a date on the back of a printed
3 photograph. July 21st, 2005. Five months approximately
4 before the search at Craig Border's house, Bongiovanni is on a
5 double date with Gerace and R.A. Five months earlier.

6 He knows what she looks like, he's in some drug
7 dealer's house, he sees her pictures, these intimate photos,
8 and he takes them. Corruptly. For no legitimate purpose.
9 And then he shows them to his friend, Peter Gerace.

10 Now, chronologically, that's the first incident of
11 corruption in this indictment, but it's far from the last. It
12 was part of the unlawful agreement, whether spoken or
13 unspoken, between Bongiovanni and Gerace, an agreement that
14 Bongiovanni would use his position as a DEA special agent to
15 serve Peter Gerace's interests above the interests of society.
16 To betray his oath to the DEA, and to demonstrate his loyalty
17 instead to this defendant. And it only gets worse from there.

18 As you learned during this trial, the real reason for
19 that corrupt agreement between the two of them was not to help
20 this defendant win an argument he was having with R.A. It was
21 for Bongiovanni to use his protection, his position as a DEA
22 special agent, to provide protection and to shield Peter
23 Gerace from investigations, from arrests, and from criminal
24 prosecution. And for years, that's exactly what he did.

25 We'll start now moving to 2008. The cold approach.

1 And this is a long time ago, so I'm going to show you Chris
2 Wisniewski, Special Agent Chris Wisniewski from the DEA. He
3 testified. He's the third witness at the trial. You'll have
4 this in the back.

5 You remember -- you remember Chris from the DEA. He
6 told you that he had an investigation called the Gambino
7 investigation in '08, a big case involving drug dealing and
8 organized crime. His target, his main target wasn't this
9 defendant. He was well into his investigation, and he came
10 into possession of an organizational chart --

11 Ms. Champoux is the best. Thank you, Karen.

12 -- he came into possession of an organizational
13 chart. He told you TJ Webb from Homeland Security got this
14 from BPD, and Peter Gerace is listed in the center towards the
15 top in a significant place in that organizational chart. It
16 was an evidentiary lead in the hands of a legitimate DEA
17 special agent, in Chris Wisniewski. That was a case that
18 Wisniewski told you Bongiovanni had nothing to do with. He
19 wasn't involved in working on it, it wasn't his case.

20 Wisniewski and Bongiovanni were in the same group,
21 and Bongiovanni came over to him. Wisniewski testified that
22 Bongiovanni brought up the fact, hey, I saw Peter Gerace's
23 name is on your organizational chart. I know him from the old
24 neighborhood. I can do a cold approach.

25 Now, of course, Bongiovanni lies, because he doesn't

1 tell Chris Wisniewski in 2008, hey, look at these, we go on
2 double dates together, we go to Niagara on the Lake, on
3 carriage rides, he doesn't say any of that. He says oh, I
4 know him from the neighborhood a long time ago, and he tells
5 Chris Wisniewski I can do a cold approach.

6 And we spent a good amount of time with Special Agent
7 Wisniewski, what is a cold approach? You're looking into an
8 organization, and you go up to one person, you pick someone
9 out of -- you select who you're gonna go to and you basically
10 say, hey, we're doing this investigation, do you want to
11 cooperate with us? Try to flip them without any charge
12 hanging over their head. Without any prior contact, without
13 an arrest leading up to it. You just inform them you're
14 investigating them and see if you can get them to flip.
15 That's what Bongiovanni suggests to Wisniewski.

16 And because Bongiovanni intentionally, on purpose,
17 misled Wisniewski about his relationship with this defendant,
18 Wisniewski agreed. He was offering to help. Bongiovanni
19 offered to do a cold approach.

20 You know as you sit here now, you know what happened.
21 Bongiovanni did whatever he did, and he came back to Chris
22 Wisniewski. He says, hey Chris, that's a dead end, Peter
23 Gerace, that's not going anywhere. He couldn't give us
24 anything, he can't help us.

25 And Bongiovanni corruptly misleads and persuades

1 Special Agent Wisniewski to move on from the center of that
2 organizational chart.

3 And you know once they do the cold approach, right,
4 Bongiovanni's killed two birds with one stone, because he's
5 gone to this defendant and he's advised him, hey, buddy, you
6 came up, you're on our radar. That's corruptly protecting
7 him.

8 And then he goes back to Wisniewski, and I submit to
9 you he lies to Wisniewski and says oh, he can't help us,
10 he's -- he doesn't know anything, and he directs Wisniewski
11 away from him. All the while misleading him about his actual
12 relationship with this defendant.

13 That's exactly what the corrupt agreement between
14 Bongiovanni and this defendant was all about. By doing the
15 fake cold approach, he moves an investigation away from Peter
16 Gerace.

17 And Joe Bongiovanni sought to cover his tracks. You
18 have Government Exhibit 30B. Let's take a look at 30B.

19 Ms. Champoux's got it up on the screen for us.

20 Bongiovanni writes what Wisniewski testified to you
21 is a report filled with false information. I submit to you
22 what he was doing was creating a paper trail. Wisniewski told
23 you this is -- these are lies. Bongiovanni didn't go get the
24 organizational chart, TJ Webb from Homeland Security did. He
25 had nothing to do with it.

1 But he writes this report, and I submit to you what
2 he's doing here is he's trying create a paper trail for why
3 he's involved in this investigation at all, covering his
4 tracks.

5 One thing we know, he didn't write anything about the
6 cold approach of this defendant in the report. Nothing there.
7 No details about his conversation with Peter Gerace.

8 What you know for sure from Special Agent
9 Wisniewski's testimony is that Peter Gerace was never a source
10 of information, and he was never a confidential source.
11 Wisniewski told you, yeah, he -- he, Bongiovanni, came back to
12 me and said, yeah, it's going nowhere.

13 So Gerace was not a source of information and he was
14 not a confidential informant for the DEA. Didn't happen.

15 As you know, that lie that Peter Gerace was a
16 confidential informant, that lie wouldn't come until about a
17 year later when this defendant again gets himself in hot
18 water, this time for violating his pro -- probation
19 conditions, and he calls on his secret agent, his double
20 agent, Joe Bongiovanni. And what does Bongiovanni do?
21 Consistent with the corrupt agreement, he jumps in and helps
22 immediately.

23 2009, October 31st, probation and FBI do a search
24 together at Pharaoh's Gentlemen's Club. The defendant tests
25 positive for cocaine, and he finds himself in hot water.

1 Before we go through the details of that a little
2 more, I want to just kind of do an exercise to get everyone's
3 mind on what was going on at Pharaoh's around Halloween of
4 2009. You heard testimony, different part of the case, but
5 same exact time in real life, you heard testimony from K.L.
6 and G.R. and others, A.P., about the constant drug use at
7 Pharaoh's. You heard testimony from G.R. and K.L. about what
8 this defendant was doing upstairs at Pharaoh's, coercing them
9 with drugs to have sex with himself and other people. That's
10 happening in August and in the summer of 2009.

11 Based on the timelines provided to you by K.L. and
12 G.R. and A.P., that's in the immediate lead-up to probation
13 coming and -- I submit to you it should be no surprise to you
14 the defendant tests positive for cocaine when probation shows
15 up, based upon all the testimony you heard about him using
16 cocaine constantly at the club during that timeframe.

17 That's the context. Providing fentanyl, providing a
18 place to use fentanyl, providing Lortabs and cocaine to women
19 who worked there, that's the context of what he's engaged in,
20 his conduct when probation and the FBI come knocking in 2009.
21 This defendant had a lot to lose. A lot to be worried about
22 if there was a larger investigation into what was going on at
23 Pharaoh's in 2009.

24 You learned from Peter Lepiane that he was contacted
25 by Tom Herbst from the FBI. Peter told you that Special Agent

1 Herbst had information that was leading him in the direction
2 of investigating the defendant. And Peter was a probation
3 officer, he was responsible for supervising the defendant.

4 You know all the information that Herbst had, that
5 was information provided by G.R. and K.L. when they got
6 arrested and provided an interview to the FBI, and they talked
7 about this defendant providing drugs and engaging in
8 commercial sex at his location.

9 Ultimately, it results in a search by probation.
10 They do a search at Pharaoh's, the defendant tests positive
11 during a drug test, and he's in trouble, he's in hot water.

12 No doubt, though, an even bigger concern for him than
13 a dirty urine test from probation is the fact that the FBI is
14 at the search, the FBI along with probation is at his club,
15 and I submit to you in that moment, this defendant knew, got
16 to call on Bongiovanni and do something about this. That's
17 exactly what he does.

18 As a part of the corrupt agreement that Bongiovanni
19 had with this defendant, he springs into action. He calls
20 U.S. Probation. And what does he do? He lies.

21 He tells them lies. He tells probation in 2009, oh,
22 yeah, Peter used to be a confidential source of information to
23 me. No evidence of that at all. DEA witnesses came here and
24 told you no paperwork, it doesn't exist. Because it didn't
25 happen.

1 Chris Wisniewski told you he never gave information
2 in my case in '08. But Bongiovanni, when he wants probation
3 to -- to treat this defendant differently, he tells them oh,
4 yeah, he used to be a source of mine. Lie.

5 He told probation that this defendant would be
6 willing to cooperate to try to get himself out of trouble. He
7 told them that this defendant would be -- would be willing to
8 cooperate to get himself out of trouble. I submit to you that
9 was another lie that Bongiovanni told just to try to -- to
10 slow things down to back probation off. It doesn't matter
11 whether it worked or not, whether probation actually changed
12 how they act. Thank God probation did what they were gonna do
13 anyway.

14 But Bongiovanni's intent, you know, when he's lying
15 to them about this defendant is to try to back them off. Oh,
16 leave Peter alone.

17 When he later needs go back and create a paper trail,
18 he wrote what Wisniewski and -- and I believe Special Agent
19 Casullo referred to as a fake DEA-6 report, he goes back and
20 he tries to create a paper trail to cover up the lie that he
21 told to U.S. Probation about this defendant previously being
22 his source. That's Government Exhibit 30A.

23 It's a report that Bongiovanni writes to try cover up
24 the corrupt agreement that he has with this defendant. Gerace
25 has acted as a confidential source, and has been able to

1 provide information regarding individuals in this case file
2 and other narcotics investigations in the past. Lie.

3 This case file, Chris Wisniewski told you that's his
4 case file. Gerace never provided any information about that
5 case. He was a dead end, remember?

6 But when the defendant now has reported to
7 U.S. Probation who worked in this courthouse that this man
8 used to be his informant, all of a sudden he goes back and
9 writes a report and he files it away in Chris Wisniewski's old
10 case.

11 That's a violation of his duties as a DEA agent.
12 Can't lie in reports, plain and simple. And if you do it,
13 because you want to cover for your buddy, doesn't matter if
14 it's for a bribe, not in the elements, not part of this crime.
15 If do you it because he's your friend, that's illegal.

16 The bigger problem facing this defendant wasn't
17 probation and the dirty urine, it was the FBI. And he knew
18 that, and Bongiovanni knew that, and they had a plan to deal
19 with it.

20 Bongiovanni lives up to his part of the corrupt
21 agreement. He acts in furtherance of the conspiracy. He
22 kills Special Agent Herbst's investigation into this defendant
23 while it's in its infancy.

24 And you know how they did it? It's the Bongiovanni
25 trademark. It's what he would later tell Lou Selva to do, and

1 try to get Lou Selva, his drug-dealer friend, to do. He
2 pretends Gerace is his informant to get other law enforcement
3 to back away.

4 So Bongiovanni sets up this meeting with the FBI, and
5 he tells his bosses one. Lie, he tells his bosses, hey, I'm
6 going to hand Peter Gerace off to the FBI, let them use him.
7 That's a lie. Didn't happen.

8 Special Agent Herbst told you, that didn't happen.

9 And he tells another lie to the FBI when he meets
10 with them, which is hey, Peter's -- he infers through his
11 action and his words that Peter's his source, he tells Herbst,
12 oh, I've known him a long time. Herbst, at the time they end
13 up having this meeting with Gerace and Bongiovanni, Herbst was
14 like a 20-plus year FBI agent. He testified to you that he
15 knows exactly what it's like when you have a meeting and
16 someone hands off an informant to you. He told you
17 unequivocally. That's not what happened.

18 He told you that Bongiovanni acted -- acted in a way
19 and said things to hold out to him that Peter Gerace was his
20 informant.

21 And Casullo explained to you the impact that that
22 has. He gave you some insight into the world of federal law
23 enforcement, and Special Agent Herbst explained to you that
24 you don't step on the toes of another federal agency if
25 they've got someone working as an informant, it's their job to

1 deal with that person. If that person's involved in criminal
2 activity, their job to handle it.

3 So Bongiovanni misleads and misdirects and conceals
4 information from Special Agent Herbst, and the outcome is
5 exactly what this defendant wanted, and it's exactly what
6 Bongiovanni wanted.

7 It caused Herbst to move on to different things,
8 other investigations. He leaves this defendant alone. No
9 more looking into Pharaoh's, because he's a DEA informant.

10 Except he's not. It's a lie told by Bongiovanni as a
11 part of a corrupt agreement, an act in furtherance of a
12 corrupt agreement to create a two-tiered system of justice.

13 Some people get investigated by the FBI and
14 probation, the facts lead them where they lead them, maybe
15 they end up in this courthouse. And some people, like him,
16 coast.

17 During the meeting, Bongiovanni tries another way to
18 dissuade Herbst. He says, yeah, your drug case, it sounds
19 like -- it sounds weak. I don't think anybody would prosecute
20 that.

21 And Herbst tells you he remembers, he responded and
22 said, I already talked to Tony Bruce at the U.S. Attorney's
23 Office. I got a prosecutor all lined up.

24 And he described for you years later that he
25 remembers what he called the oh, shit look on Joe

1 Bongiovanni's face at that moment, when Bongiovanni realized
2 Herbst had gone further than he thought. This defendant was
3 exposed more than he thought.

4 You know as you sit here today that what Bongiovanni
5 did by backing Herbst off by trying to back probation off, was
6 create a corrupt no-fly zone over Pharaoh's. FBI, back off.
7 Corrupt no-fly zone. Which permitted this defendant to
8 continue the conduct that you now know was going on in the
9 summer of 2009, to continue that conduct unabated for years
10 and years. To kill a law enforcement investigation, a
11 legitimate law enforcement investigation, you know it's
12 legitimate. You heard from K.L. and G.R. and A.P. exactly
13 what was happening at that club. You know Herbst was on the
14 right track, but this defendant's corrupt agreement with Joe
15 Bongiovanni allowed him to continue that conduct for a decade
16 after.

17 And after 2009's not the last time. The FBI
18 investigation isn't the last time that Bongiovanni intercedes
19 on this defendant's behalf. And we'll talk about why he did
20 it in a little bit. But let's move on to 2016.

21 Things start to heat up again in 2016 with Special
22 Agent Anthony Casullo, Tony Casullo, and you heard him
23 testify. Special Agent Casullo initiates an investigation
24 into this defendant in 2016, and he tells you he's concerned,
25 he reports to his boss -- because he knows Bongiovanni is

1 somewhat friends with Gerace -- he reports to his boss, hey,
2 Joe Bongiovanni's phone might be in Gerace's phone records
3 when I order them. And Casullo told you his boss said okay,
4 go ahead, order the phone records and we'll deal with it when
5 it happens, if it happens.

6 So Casullo orders the phone records in 2016, this
7 defendant's phone records, and he sees Bongiovanni's number
8 716-818-0966. He sees the phone number in the phone records,
9 goes to his boss and says, hey, Joe's number's in here what do
10 you want me to do? The boss says, I'll handle it.

11 So Tony Casullo goes on about, you know, continuing
12 to start an investigation into this defendant. And he
13 described to you how after that happened, after he told his
14 boss that Bongiovanni's phone number was in Peter Gerace's
15 phone records, his boss became noticeably hostile to him at
16 work -- Bongiovanni, I'm sorry, became noticeably hostile at
17 him at work. He's pissed off. Casullo told you he testified
18 that he didn't really understand why at the time. But, yeah,
19 we're sitting here knowing everything you know, you know why
20 he was pissed.

21 The alarm bells were going on for Bongiovanni again.
22 As we discussed twice already, in '08 and '09, Bongiovanni's
23 going to have to jump in and back people off of Peter Gerace.
24 Prevent them not only from investigating and arresting this
25 defendant, but prevent them from discovering that Bongiovanni

11:39AM 1 himself is involved in protecting him.

11:39AM 2 And this time, it's going to be even harder for
11:39AM 3 Bongiovanni, because it's his own agency that's investigating
11:39AM 4 Peter Gerace.

11:39AM 5 The things he's done in the past to back off the FBI,
11:39AM 6 that's not gonna work.

11:39AM 7 The cold approach that he did with Wisniewski's
11:39AM 8 investigation, that's not gonna work. The cold approach, this
11:39AM 9 defendant's name had come up in the context of a much larger
11:39AM 10 case. Casullo was investigating this defendant and Pharaoh's
11:39AM 11 specifically. It's common sense you don't do a cold approach
11:40AM 12 of your main target. So that wasn't an option.

11:40AM 13 So what does Bongiovanni do? Well, when Special
11:40AM 14 Agent Casullo testified to you he's trying to clear the air,
11:40AM 15 and he invites Bongiovanni into a conference room to have a
11:40AM 16 private discussion.

11:40AM 17 I submit to you at that moment, Bongiovanni seizes on
11:40AM 18 the opportunity to press the nuclear button. He used his
11:40AM 19 bluster and his words to blow up Casullo's investigation into
11:40AM 20 Gerace. And Casullo described that conversation to you that
11:40AM 21 happened eight years ago in minute detail. He remembers who
11:40AM 22 spoke first, who spoke second, what words they said. And I
11:40AM 23 submit to you the reason why Tony Casullo remembers that
11:40AM 24 conversation almost verbatim is because it shocked him to his
11:40AM 25 core. And that's exactly what Bongiovanni was designing in

11:40AM 1 that moment.

11:40AM 2 I submit to you that conversation has haunted Tony
11:41AM 3 Casullo for the rest of his career, and I think you saw that
11:41AM 4 from him when he testified on the witness stand.

11:41AM 5 So they walk into that conference room, and Casullo
11:41AM 6 says he speaks first, and he's apologetic. He says, hey, Joe,
11:41AM 7 I wasn't trying to jam you up. I'm not trying to get you in
11:41AM 8 trouble, just running Peter's phone records. That's all.

11:41AM 9 And he tells you that Bongiovanni immediately is
11:41AM 10 elevated. He's angry. Special Agent Casullo testified to you
11:41AM 11 that Bongiovanni's first words to him were, this is bullshit.

11:41AM 12 What's bullshit? Investigating this defendant?

11:41AM 13 But Bongiovanni's angry about it, and he doesn't stop
11:41AM 14 there. His anger and his bluster, he's elevated and rambling,
11:41AM 15 and he says, this is bullshit. And he follows that up by
11:41AM 16 saying, that kid called me, that kid called me when a stripper
11:41AM 17 overdosed in his club, and I told him to get her out of there.

11:41AM 18 A shocking admission. Shocking when he said it to
11:42AM 19 Tony Casullo in 2016. I submit it was probably shocking to
11:42AM 20 you when you heard it in 2024.

11:42AM 21 A DEA special agent saying a person that he knew was
11:42AM 22 being investigated by his own agency had called him when a
11:42AM 23 dancer overdosed. They're supposed to investigate drug
11:42AM 24 overdoses. And Bongiovanni says, he called me when a stripper
11:42AM 25 overdosed, and I told him get her out of there.

1 In a moment of anger, he makes that shocking
2 admission. Get her out of there like she's trash.

3 That's the corrupt agreement. That's the criminal
4 conspiracy in action. Don't investigate the dancer, the
5 stripper that's overdosing. Get her out. Cover it up.
6 Conceal the crimes that are happening.

7 And who benefited from that? Who benefitted from the
8 corrupt advice, and the coverups, and the concealments? He
9 did. Over and over again for years. From 2008, to 2009, to
10 2016, all the way up until his indictment in this case, he
11 benefited from the corrupt agreement with Bongiovanni, his
12 agent on retainer.

13 And you know for a fact that that conversation that
14 Casullo described for you, you know for a fact that it
15 happened. And here's why.

16 You heard testimony from Doug Augustyniak, no friend
17 to the government. Doug and Tony have no -- they're not
18 related to each other at all. Doug's a VIP attendant at
19 Pharaoh's, Tony Casullo is a DEA agent, I submit to you not a
20 corrupt one. And Doug Augustyniak describes to you a dancer
21 overdosing, calling this defendant, and receiving the advice
22 from this defendant, get her out of there. Drop her off at a
23 hotel lobby or something.

24 He was employing -- this defendant, Peter Gerace, was
25 employing the corrupt advice he was getting from his DEA agent

1 on retainer.

2 So let's go back. That's -- that's corroboration.

3 It's why you know you can believe what Tony Casullo tells you,
4 based on the evidence and the testimony of other witnesses.

5 Let's go back to the conversation. Casullo tells you
6 that he was shocked, he's trying to process what Bongiovanni
7 just said. Bongiovanni pressed forward, I submit to you,
8 because he's intent on backing Casullo down.

9 And he asks Casullo in an accusatory tone of voice,
10 he says, isn't he friends with your brother-in-law?

11 And I submit to you, you saw from Tony Casullo, he
12 doesn't care. His brother-in-law is not him, it's not his
13 friend, he doesn't care. And he tells Bongiovanni that. He
14 says, yeah, and my brother-in-law caused a lot of problems.

15 Casullo is not going to back off of an investigation
16 because of who his wife's brother is. I submit to you his
17 demeanor and his testimony established that for you.

18 So Bongiovanni has to try a new avenue of attack. So
19 he asks Casullo, Casullo, in an accusatory tone, what, do you
20 hate Italians?

21 And Tony Casullo's, like, no, I'm Italian. What are
22 you talking about?

23 And Bongiovanni, in a disgusting display of
24 corruption and bigotry, vomited out the words, we should be
25 investigating N-words and S-words, disgusting racial comments

1 uttered for one purpose: To back Tony Casullo down, stop his
2 investigation in its tracks.

3 When he did that, when he said those disgusting
4 racial remarks to Tony Casullo about who the DEA should be
5 investigating, what he did was put Tony Casullo in a dilemma.
6 I submit to you it should have been an easy choice for Tony
7 Casullo, but it wasn't.

8 He gave him two choices. You go and report this
9 conversation and violate the blue wall of silence and make
10 yourself a pariah in the office, or you back down and shut up.
11 Leave it alone.

12 And for years, to Tony Casullo's shame, that's what
13 he did. For about two years he didn't report it to his
14 management.

15 That conversation, after Bongiovanni sees Casullo
16 start to calm down, I submit to you, he moves on and he says
17 hey, listen, I'm going to the guy's parents' 50th anniversary.
18 That's what he tells Casullo basically on the way out the
19 door. I'm going to his parents' 50th wedding anniversary.

20 And Casullo, who had no clue about Government Exhibit
21 310D at that time in 2016, he's corroborated by their text
22 messages where you see Bongiovanni and Gerace texting about
23 it.

24 Casullo, who was new to the Buffalo office and who
25 was worried about being a pariah for accusing another agent of

1 racism and misconduct and corruption, he made the wrong
2 choice, he stayed quiet. For a little while he kept his mouth
3 shut.

4 But you know that Casullo ultimately did come forward
5 with what you know was the truth, and two years later he
6 reports what Bongiovanni said to him. And when he did report
7 it, he told you, he faced all of the backlash that he was
8 worried about, which is shameful.

9 Once again, at least temporarily, in 2016,
10 Bongiovanni steps in, and he squashes an investigation into
11 this defendant. Another example of the conspiracy and the
12 corrupt agreement at work.

13 And the defendant didn't only rely on Bongiovanni to
14 squash investigations into himself. You heard testimony from
15 Lou Selva that Bongiovanni told Lou Selva, yeah, Peter called
16 me one time to jump in on Anthony's behalf when Anthony got in
17 trouble -- Anthony Gerace got in trouble with drugs in
18 Amherst, and I did.

19 He also used him, in addition to providing protection
20 to himself and his brother and other drug dealers, Gerace used
21 Bongiovanni to get realtime criminal advice. Let's talk about
22 that.

23 May 4th, 2017. So we're just about a year after
24 Bongiovanni bullies Casullo away from Gerace, just about a
25 year after that, when Bongiovanni's obviously aware that the

1 DEA has an interest in investigating Peter Gerace for drug
2 dealing. May 4th, 2017, this defendant, Peter Gerace, leaves
3 this voicemail on the DEA work cell phone of Joe Bongiovanni.

4 And I want to play 311, please, Ms. Champoux.

5 (Audio was played.)

6 **MR. COOPER:** Hey, Joe, it's Peter. Listen, I want to
7 know, if a guy's dealing drugs, and he's got a regular phone
8 or if it's a phone that -- one of those TracFones, is there a
9 way you could ping it like the police do to see where you're
10 at? Where they can tell where you're at? I just want to know
11 if you could do that or not. Give me a call back, 725-1931.

12 His words. A voicemail he left in May of 2017 on a
13 DEA special agent's cell phone. It's crystal clear documented
14 example of this defendant asking Bongiovanni for
15 law-enforcement sensitive information.

16 The reason it's law-enforcement sensitive
17 information, I submit to you, is because he's asking about the
18 capability to geolocate a specific type of phone. Whether the
19 DEA or the FBI is able to do that or not is not something that
20 the DEA and the FBI want drug dealers to know about.

21 It's common sense, right? You don't want that
22 information out in the public domain. It frustrates the
23 United States and law enforcement's ability to investigate
24 drug-trafficking crimes if drug dealers know the exact tools
25 you have to investigate. So it's law-enforcement sensitive

11:50AM 1 information.

11:50AM 2 And this defendant brazenly, without a care in the
11:50AM 3 world, calls Bongiovanni, says hey, if a guy's selling drugs
11:50AM 4 can you ping his TracFone?

11:50AM 5 This defendant wasn't writing a college paper. I
11:50AM 6 submit to you that he wasn't curious about something that he
11:50AM 7 saw on TV. In the context of all the evidence and testimony
11:50AM 8 that you've heard in this case, you know the defendant was
11:51AM 9 involved in distributing drugs. You know about his brother's
11:51AM 10 involvement in distributing drugs. And here he is in a
11:51AM 11 recorded voicemail asking for advice about getting away with
11:51AM 12 selling drugs from a sworn DEA agent.

11:51AM 13 I submit to you the only reason that this defendant
11:51AM 14 felt comfortable doing that is because he's got that agent in
11:51AM 15 his pocket. He wasn't worried about it. He left it in a
11:51AM 16 recorded voicemail.

11:51AM 17 And of course he was right, he did have Bongiovanni
11:51AM 18 in his pocket, because Bongiovanni answers him.

11:51AM 19 We're at 310D, page 42. Ms. Champoux, can you zoom
11:51AM 20 in on the gray box?

11:51AM 21 Bongiovanni gets right back to him. Yes, but you
11:51AM 22 would need a warrant in order to get a ping order.

11:51AM 23 Retainer. Bongiovanni was on retainer for this drug
11:51AM 24 dealing, sex-trafficking defendant, helping him stay out of
11:51AM 25 trouble.

1 Just how corrupt was their relationship? They were
2 doing cocaine together. They blew cocaine together, think
3 about that. This defendant felt comfortable enough in the
4 presence of this sworn DEA agent to rip lines of coke with him
5 at Sunset Bay at Tom Doctor's cottage. P.H., she was there.

6 Let's zoom in on just the right portion of this
7 please, Ms. Champoux. This is Government Exhibit 127.

8 Here's P.H. on the left. Next to her in the red
9 shirt is this defendant, and then to the right is Bongiovanni
10 and his wife. They're at Tom Doctor's little party cottage on
11 Sunset Bay. And P.H., who at the time didn't know Joe
12 Bongiovanni from a hole in the wall, she goes upstairs with
13 Peter, she says oh, it's -- it's Peter's friend, we go
14 upstairs, and this guy breaks out cocaine and we all used it.

15 At the time she circled his face, she didn't know he
16 was a DEA special agent. She knew nothing about the
17 significance of it. But you heard her testify this guy and
18 this guy were using cocaine together at the cottage.

19 And if we can zoom out, Ms. Champoux.

20 The other person that she circled that she also said
21 used cocaine with Bongiovanni and Gerace, is this guy on the
22 left here in the sunglasses, who you've learned is Tom Doctor.
23 She had no clue at the time she circled that person on the
24 left that he was formerly Bongiovanni's task force officer
25 partner, another law enforcement officer.

1 She picks those two people because those are the two
2 people she saw using cocaine. And how do you know you can
3 believe P.H. when she tells you that? Other than the fact
4 that, I submit to you, her testimony on its own should be
5 found credible by you, think about the fact that she's
6 corroborated by Lou Selva who she doesn't even know.

7 Lou Selva also told you he's been to Tom Doctor's
8 cottage with Joe Bongiovanni, and they've blown cocaine there.
9 Two totally separate people, two totally separate walks of
10 life, describing the exact same conduct. So you know P.H. is
11 telling you the truth based on the other evidence in the case.

12 The final acts of coverup and corruption occur when
13 Bongiovanni finds out that Casullo has reported his comments
14 and his relationship with Gerace in the context of his
15 relationship with this defendant.

16 Bongiovanni knows that his relationship with this
17 defendant is under scrutiny, he's racing to retire, spurred on
18 by the spotlight that's been placed on him and this defendant
19 when Casullo finally does come forward. And Bongiovanni, on
20 his way out the door, tries to create another false,
21 misleading, corrupt, concealing, coverup report or memorandum.
22 He writes three, a series of three memorandums on his way out
23 the door to try to create some paper trail of his relationship
24 with Peter Gerace, and it's nonsense.

25 He generates these memorandums to draw attention away

1 from himself and his corrupt agreement with this defendant.

2 Let's take a quick look at those memos, because they
3 speak to Bongiovanni's consciousness of guilt, the fact that
4 he's lying shows you that he knew what he was doing was wrong.

5 Government Exhibit 97. This is the first one, the
6 first memo from November 1st, 2018. We're going zoom in on
7 the top paragraph.

8 It was brought to my attention that Peter Gerace had
9 become a target of a federal investigation. Based upon
10 intelligence I have received, I have attempted to terminate
11 all contact with Gerace.

12 Hold on. Bongiovanni, in 2018, is saying oh, I just
13 became aware that Gerace is a target of investigation. You
14 know that all the way back in 2008 and '9 Bongiovanni knew
15 Gerace was a target of federal investigation. So that's a
16 lie. And you know it's BS that he's trying to terminate all
17 contact with him in 2018.

18 You can zoom out of that, Ms. Champoux.

19 Okay. The next part of that paragraph, it talks
20 about, oh, it should be known any contact I've had with this
21 defendant Peter Gerace in the past was minimal in-person
22 contact, and primarily consisted of random telephonic
23 communication based upon the fact that we were childhood
24 friends. Yeah, okay.

25 Let's go to Government Exhibit 127, 426-1, 490A.

1 Minimal in-person contact, you know, like vacations
2 to Las Vegas, and carriage rides in Niagara on the Lake, and
3 blowing cocaine together at Sunset Bay.

4 But Bongiovanni left those details out because he was
5 lying. Random telephonic communication. You remember the
6 British accent FBI data analyst, Gregory Machin? Machin blew
7 a hole through that random telephonic communication. Take a
8 look at their phone contacts if you need that.

9 Bongiovanni didn't just forget to mention that Gerace
10 was leaving him voicemails asking for tips on getting away
11 with drug dealing, he was doing it on purpose. It was
12 corruption, it was a coverup.

13 Let's go to Government Exhibit 98.

14 The second corrupt, concealing memo designed to hide
15 this conspiracy. We're gonna look at the bottom of page 1.

16 Thank you, Ms. Champoux.

17 So this is a memo from December 10, 2018. This is my
18 favorite. This is Bongiovanni attempting to accurately
19 recount a conversation he had on the phone with Peter Gerace.
20 He's claiming this is a conversation they had in real life.

21 Gerace stated that the person believes internal
22 affairs is watching me because Gerace and I have been friends
23 since we were kids, and now he owns Pharaoh's Gentlemen's
24 Club.

25 I responded that yes, we have been friends for years,

1 but I never come into your club. And Gerace said he agrees.

2 Anyone believe that conversation happened that way?

3 You know it didn't.

4 Let's go to Government Exhibit 310D at page 10.

5 July 13th, 2015. Here's Bongiovanni saying to

6 Gerace, leaving my office now. Gerace says okay, employee

7 entrance on Aero.

8 Hmmm, where's there an employee entrance on Aero

9 Drive? What did we learn during the course of this trial?

10 There might be more than one business on Aero Drive that has

11 an employee entrance. Who knows, right?

12 Let's move on to page 54, see if we can find an

13 answer.

14 Bongiovanni texting on April 1, 2018, I'll come see

15 you at Pharaoh's.

16 The evidence shows that Bongiovanni was lying,

17 obviously. And it's not just the text messages. K.L. saw

18 Bongiovanni at Pharaoh's. Katrina Nigro saw Bongiovanni at

19 Pharaoh's. A.P. saw him at Pharaoh's, met him there, and then

20 got his business card. Keep in mind, she was a drug dealer.

21 You can take that down.

22 These memos are a load of nonsense. The only reason

23 they're important is because they show Bongiovanni's

24 consciousness of guilt. They're an act, an overt act designed

25 to coverup and conceal the conspiracy that existed with this

1 defendant. He's lying about their relationship.

2 Exhibit 99, the last memo, and we're -- we're getting
3 through here. Let's look at -- this is the last memo, and
4 it's designed essentially to dirty up Tony Casullo on his way
5 out the door.

6 Just days before he retires, Bongiovanni writes a
7 fairy tale about how he saw Tony Casullo drinking privately
8 with this defendant in 2015 at -- at a restaurant, at Tappo, I
9 think it says, and then later at, let's see, thank you, Big
10 Ditch Brewery and later at Tappo.

11 First of all, if Casullo and Gerace were alone at the
12 Big Ditch Brewery, alone, then what was Bongiovanni doing
13 there? Was he out on surveillance watching what his best
14 friend was doing?

15 Casullo told you what really happened. He was at his
16 high school reunion in 2015, and Peter Gerace, this defendant,
17 was essentially pestering him, hey, come on, let's go across
18 the street, there's another DEA agent over there, let's go see
19 him. Bongiovanni, he's with my brother Anthony.

20 And Casullo told you under oath subject to
21 cross-examination, not in a nonsense memo, in real life, he
22 came in here and told you, eventually I relented and I walked
23 across the street, and I saw Joe Bongiovanni hanging out with
24 Anthony Gerace, this defendant's brother, and a few other
25 people.

1 So why did Bongiovanni write this memo? Well I
2 submit to you on his way out the door, he knows Casullo's
3 reporting about his inappropriate relationship with Gerace,
4 about the comments that he made, and he knows Casullo saw him
5 alone with Anthony Gerace and a group of other people at a
6 bar. So he basically flips himself into, you know, puts Tony
7 Casullo in his position and says, I saw Tony. And he tries to
8 create this he-said/he-said situation.

9 But you know, using your good judgement and your
10 common sense, that Tony Casullo was -- testified consistent
11 with all the other proof in this case. That it was
12 Bongiovanni hanging out with Anthony Gerace, not him.

13 Casullo isn't alone in saying that Bongiovanni hung
14 out with Anthony Gerace. Kevin Myszka. Kevin Myszka, over
15 here on the right, he told you he went to Toronto, Canada with
16 Joe Bongiovanni and a group of other people, it was like a
17 cocaine-fueled weekend in Canada. And who was there? Joe
18 Bongiovanni and Anthony Gerace. That's how you know you can
19 trust Special Agent Casullo's testimony.

20 Each of those memos are overt acts in furtherance of
21 the conspiracy. They're lies designed to cover up the
22 criminal agreement.

23 I expect that the judge is going to instruct you when
24 people are in a conspiracy together, they're legally
25 responsible for each other's actions that are in furtherance

1 of the conspiracy.

2 These lies that Bongiovanni told designed to cover up
3 and mislead are attributable to this defendant. I submit to
4 you that makes sense, because members of a conspiracy are like
5 members of a team. They're working towards the same goal.

6 So think about. I have an analogy, and it's a Bills
7 analogy. Shocker.

8 Dion Dawkins and Josh Allen, they play for the same
9 team, right? If Dion Dawkins jumps early and there's a false
10 start penalty, he's not the only one who's moving back five
11 yards. The whole team gets penalized, because they're working
12 towards the same goal. They're members of a team.

13 Conspiracy is the same thing.

14 I submit to you all of Bongiovanni's actions
15 corruptly covering up, protecting, shielding this defendant,
16 are legally attributable to this defendant. Listen carefully
17 when the judge instructs you on the law in that regard.

18 Bongiovanni gives interviews later, and we're going
19 to move through this quick, we're running out of time.
20 Bongiovanni gives interviews later with HSI, and with the
21 Department of Justice OIG, and he lies more. And he lies in
22 both of these interviews, says he never witnessed Peter Gerace
23 use narcotics. Lie.

24 Denied that the defendant ever called him while a
25 staff member was overdosing at Pharaoh's. Lie.

12:03PM 1 Denied ever initiating contact with Peter Gerace.

12:03PM 2 Lie.

12:03PM 3 And then in June, he gives an interview at his house
12:03PM 4 during a search warrant, and he says:

12:03PM 5 He does not have a close relationship with the
12:03PM 6 defendant; you know that's not true.

12:03PM 7 Claimed he hasn't spoken with this defendant in over
12:03PM 8 a year; demonstrably false.

12:03PM 9 Denied ever attending a party with the defendant's
12:03PM 10 brother Anthony; you know that's not true, you heard from
12:03PM 11 Kevin Myszka.

12:03PM 12 Claimed that this defendant had once tried cooperate
12:04PM 13 with the DEA and that he recused himself; not true. That's
12:04PM 14 designed to cover up and protect what happened.

12:04PM 15 And claimed that the Sunset Bay cottage had been --
12:04PM 16 Sunset Bay cottage party had been years earlier; and that was
12:04PM 17 also a lie. You see the picture and the text messages. It's
12:04PM 18 in the defendant's text messages with Bongiovanni. That
12:04PM 19 happened months earlier, not years earlier.

12:04PM 20 So the first element of Count 1, that two or more
12:04PM 21 people entered an unlawful agreement. Check.

12:04PM 22 The judge will tell you actions speak louder than
12:04PM 23 words, and you don't lose your common sense when you walk
12:04PM 24 through the door. You look at the entire sphere of what
12:04PM 25 happened over the course of 11 years from '05, more than that,

1 '05 to '19, someone else do the math, a long time.

2 You look at everything that happened, you put all of
3 that together, and I submit you to you there is no other
4 reasonable explanation than that these two people were working
5 together, they're in a corrupt agreement to have Bongiovanni
6 defraud the United States by violating his oath and duties, by
7 being loyal to this defendant.

8 The second element is that the defendant willfully,
9 knowingly, voluntarily became a part of that conspiracy, and
10 you know that he did.

11 This defendant is the one who called Bongiovanni in
12 '09 and told him, hey, probation and the FBI showed up.
13 That's an act that shows you he knows he's going to be
14 protected from Bongiovanni. This defendant is the one who
15 called Bongiovanni to get him to step in and protect Anthony
16 Gerace, another way you know the defendant voluntarily engaged
17 in this criminal partnership. The defendant is the one who
18 left a voicemail on Bongiovanni's phone asking for criminal
19 advice. The defendant is the one who called Bongiovanni when
20 a dancer was overdosing for criminal advice. How do I get out
21 of this? What should I do?

22 The defendant knew full well that he was in a corrupt
23 agreement with Joseph Bongiovanni to be shielded from law
24 enforcement investigation.

25 This defendant provided envelopes of cash to

1 Bongiovanni on multiple occasions, more evidence that he was
2 knowingly and willfully a member of a conspiracy, a corrupt
3 agreement.

4 Third element, that an overt act was committed by
5 either a coconspirator. There's 20 overt acts in the
6 indictment, I don't have time to read them all to you now, but
7 most the things that we just discussed explaining why you know
8 the conspiracy existed are listed as overt acts.

9 2009, interceding with probation and the FBI, those
10 are overt acts.

11 The defendant leaving a voicemail for Bongiovanni
12 asking about the TracFone -- pinging TracFones, that's an
13 overt act listed in the indictment, and you only need to find
14 one overt act, there's 20 of them. You need to find one
15 beyond a reasonable doubt to satisfy that element. I suggest
16 to you that when you read through all 20 in -- in
17 chronological order, I suggest to you every single one of them
18 has been proven at this trial beyond a reasonable doubt, but
19 the judge will tell you, you only need to find one.

20 Those -- those memos, designed to cover up and
21 conceal, all of them are overt acts.

22 The fourth element that you have to find is that the
23 overt act that was committed was committed to further the
24 purpose of the conspiracy, and that's a -- a dunker. The
25 overt act is committed to further the objectives of the

1 criminal partnership.

2 The criminal partnership here is to protect this
3 defendant. And so all the things that Bongiovanni was doing
4 were designed to protect him. It's obvious. When Gerace
5 calls this defendant and asks for -- when Gerace calls
6 Bongiovanni and asked for a law-enforcement sensitive
7 information, that's to further the objective of the
8 conspiracy. You'll see the objectives laid out in the
9 indictment: To obtain law-enforcement sensitive information
10 from Bongiovanni, that's an objective of the conspiracy.

11 So the fourth element is met.

12 And that's it. That's all there is to
13 Count Number 1, conspiracy to defraud the United States.

14 Notice that there isn't an element in there about it
15 being an exchange for money. That's not required. We're
16 gonna get there in a second when we talk about Count 2, but
17 for Count 1, it doesn't matter, and I want you to keep that in
18 mind.

19 It's good evidence to consider the fact that this
20 defendant was paying envelopes of cash to Bongiovanni shows
21 you that he knows they're in a corrupt agreement together, but
22 it's not required.

23 Find the defendant guilty of Count 1 because his
24 choices and his conduct make him guilty of Count 1.

25 We're going to move on to Count 2 now.

Public corruption. Same category, bribing, paying a bribe to a public official. One of the elements that you're going to have to find is that the defendant offered, promised, or gave something of value to Joseph Bongiovanni. We'll talk about it in a minute. Those are the envelopes of cash.

Second, that Bongiovanni was then a public official by virtue of being a special agent of the DEA, proven beyond a reasonable doubt, Bongiovanni was a special agent at the DEA.

Third, that the defendant did so with the corrupt intent to influence an official act or to induce that official to perform an act or omit to perform an act.

There's two things that are important about this bribery count that I want to focus on, two things that I'd like to focus on with you. One of them is called mixed motive. I think the judge is going to instruct you about mixed motive, and he's going to tell you if a payment is made for a multitude of reasons, for a birthday present and also as a part of a scheme to continue having a special agent on retainer, that's fine, people rarely act for one purpose alone. So if a person has a mixed motive when they provide a financial benefit, that's still sufficient as long as part of that motive was motivated by corrupt intent. So keep that in mind.

The other thing I want to discuss is called stream of benefits. I expect the judge is going to discuss stream of

benefits with you. And when he talks about that, I think you'll learn that we don't have to prove in Count 2 that any specific payment of money was tied directly to any specific act or omission by Bongiovanni.

So, a stream of benefits, essentially, it's sufficient in the eyes of the law for us to prove to you beyond a reasonable doubt that the bribe or bribes were paid in order for this defendant to keep Joe Bongiovanni on retainer. This defendant had Bongiovanni ready on an as-needed basis. When something comes up, jump in and protect me. When I have questions, answer them. And there's a stream of benefits over the course of time in relation to that conduct. And I submit to you that's exactly what happened here.

Based on all the corrupt things that we just talked about that Bongiovanni did, you know that Bongiovanni as a DEA special agent used his role and his job to protect this defendant from investigation. Testimony and evidence proves that.

The whole purpose of cash bribes, though, is to avoid detection, right? So you don't seize cash bribes. If someone gives you a few thousand dollars in an envelope, you can spend that in a couple weekends at Wegmans, you can spend that when you go on vacation to Las Vegas with your wife, or Florida. Blow some money on a nice hotel, enjoy some extravagant

dinners, the cash is gone.

So how do we prove it happened to you? Well, in conspiracies such as this one where people are being secretive, where they don't want you to catch them, you oftentimes need an insider, you need someone with access. You either have to have one of the defendants flip and start telling you what was going on, or you need an insider. And in this case, you have Katrina Nigro.

And at that time, back in 2000 -- back in early 2000s, 2010 window, Katrina Nigro was someone that this defendant trusted. He's someone that she picked, that he picked rather, he picked her. He tried to marry her, but all the marriage documents were forged by his corrupt judge friend. But this defendant chose Katrina Nigro, and at the time he trusted her. He picked her as a witness in this case when he brought her into his life and involved her in his criminal activity.

So let's talk about what Katrina Nigro told you regarding bribe payments, and then we'll talk about how you know you can trust what she's telling you.

Ms. Nigro testified that she met Bongiovanni at Pharaoh's through this defendant, through Peter Gerace. She testified that the first time she met him he was in the office hanging out with Peter. And she said over the years, she socialized with Bongiovanni and Peter together about eight

1 times. Generally, that testimony is corroborated by A.P.,
2 K.L., Lou Selva, all of whom saw Bongiovanni at Pharaoh's.
3 It's also corroborated by the text messages that we talked
4 about a little earlier. So Katrina Nigro is not out on an
5 island with her testimony that Bongiovanni came to Pharaoh's
6 and socialized with this defendant.

7 Ms. Nigro also testified about a birthday dinner at
8 Boss restaurant. She testified that this defendant brought
9 her to that party, and that before they went she saw the
10 defendant loading an envelope with cash. That's what he was
11 doing. She said that he told her at a time when you know he
12 trusted her -- it's not now, we're not in 2024, this is back
13 in 2015 -- he tells Katrina Nigro I'm giving him \$5,000,
14 excuse me. That's corroborated by the text messages in 310D,
15 pages 11 through 17, where they talk about going to this
16 dinner at Boss restaurant. These text messages establish that
17 the defendant went to Bongiovanni's birthday at Boss
18 restaurant, and that the defendant, Peter Gerace, he brought
19 two people with him, Katrina and Anthony.

20 \$5,000 in cash. What's that for? Let's talk about
21 it.

22 \$5,000 in cash in an envelope to a DEA special agent
23 who's turning 51 years old in 2015.

24 \$5,000. I submit to you that in the context of
25 everything you know about what was going on in '05, '08, '09,

1 '16, '17, I submit to you in the context of all of that, you
2 know what \$5,000 in an envelope to Joe Bongiovanni was for.

3 At a minimum, it was at least partially motivated by
4 a corrupt intent so that this defendant could keep Bongiovanni
5 on retainer.

6 After this payment at Boss restaurant, Bongiovanni
7 would later receive a voicemail from him, from Peter Gerace,
8 saying hey, can you guys track TracFones? Can you ping them
9 the way cops do? That's after the \$5,000 payment.

10 You know, using your good judgment, your common sense
11 life experience, that 5,000 bucks in an envelope was a bribe.
12 Plain and simple. And that's not the only bribe payment you
13 heard testimony about.

14 Ms. Nigro described for you times when the defendant
15 wasn't present at Pharaoh's where he asked her to take over
16 handing money to Bongiovanni. Ms. Nigro described it as
17 follows, quote: When Peter wasn't in the building and I was
18 in the office, he would tell me to run an envelope out to
19 Bongiovanni, and I would meet him by the side door, the door
20 close to Aero Drive.

21 Hmm, where have we heard that before? Use the
22 employee entrance on Aero Drive. That sounds so familiar.
23 That's where the defendant told Bongiovanni to meet him in his
24 own text messages that Katrina Nigro could have no way of
25 knowing about. She's corroborated about their own

communications with each other.

July -- thank you -- July 13th, 2015, just five days before that \$5,000 payment at Boss restaurant, this defendant is telling Bongiovanni to use the employee entrance on Aero.

She testified that she would hand Bongiovanni envelopes with what she knew had cash in them. And again, just use your common sense life experience. If you're over the age of 18, you know what cash looks like and feels like. I mean, maybe things are changing now, but most people have handled cash before in their life. It's always the same shape, it's always the same length, the same height. Cash is distinct, U.S. currency, it's obvious. And Katrina Nigro, who handled money often, it was obvious to her what an envelope filled with cash was.

She testified that she would hand Bongiovanni those envelopes, and she knew they had cash in them based on how they felt and what she saw.

Ms. Nigro testified that the defendant never told her -- Peter never told her what the payments were for, and she never asked. She didn't have the full picture, but you do.

I submit that you know based upon all the evidence and all the circumstances in this case that it was to keep Bongiovanni on retainer, to keep him answering when this defendant called. Those bribe payments gave this defendant

12:17PM 1 power.

12:17PM 2 Now I expect they're going to come here and they're
12:17PM 3 going to go hard at Katrina. I want you to keep in mind a few
12:17PM 4 things. Think about what she didn't say, 'cuz if Katrina's
12:17PM 5 here on some, you know, evil-genius mission to frame Peter
12:17PM 6 Gerace, why didn't she say things like, oh, the defendant told
12:17PM 7 me he was being protected by Bongiovanni? She never said
12:17PM 8 that. That would have helped her evil-genius plan, but she
12:17PM 9 didn't say that. And I submit to you the reason why she
12:17PM 10 didn't was because when you're telling the truth, you're
12:17PM 11 confined by the facts of what actually happened. And he kept
12:17PM 12 that quiet, he didn't tell her even though he trusted her that
12:17PM 13 the payments were bribes. She didn't need to know.

12:17PM 14 She never said that she saw Bongiovanni use cocaine
12:17PM 15 with Gerace. She could have said that. She could have used
12:17PM 16 her mouth to make those words, but she didn't say those things
12:17PM 17 even though other people told you they saw it, because Katrina
12:17PM 18 Nigro was confined by what she actually observed.

12:18PM 19 I submit to you that she didn't testify about those
12:18PM 20 things because she doesn't know about them. That's one other
12:18PM 21 way you know that this was not some evil-genius plan by
12:18PM 22 Katrina. You should find her testimony credible because it's
12:18PM 23 corroborated by the evidence in the case and other witnesses.

12:18PM 24 Everything we've talked about so far, the entire
12:18PM 25 universe of information in this case, leads to only one

1 reasonable inference about those envelopes, those payments,
2 that cash. The only reasonable inference I submit to you is
3 that Bongiovanni was receiving that money, being paid that
4 money by this defendant, to be kept on retainer, to step in
5 when he was needed.

6 The first element, that the defendant gave money to
7 Joe Bongiovanni, check.

8 The second element, that Bongiovanni was then a
9 public official, check.

10 The third element, that it was done, those payments
11 were given with a corrupt intent, check.

12 When you go back, I suggest that you should find him
13 guilty of Count 2, because his choices and his conduct are
14 what make him guilty of Count 2.

15 We're going to move a little quicker than I expected
16 through the last category of proof because I'm running out of
17 time here. Witness tampering, three counts, 6, 7, and 8,
18 cover the same incident of witness tampering, so don't get
19 confused about that it's all one incident, but there's three
20 different legal theories.

21 So there's -- the statutes are all very slightly
22 different, but they each charge a violation of the law related
23 to the November 2019 tampering with P.H.

24 Think about the timeline. April 2019, P.H. is
25 providing information to federal law enforcement for the very

12:19PM 1 first time.

12:19PM 2 His buddy, Greg Trotter, the detective that he's
12:19PM 3 exchanging all these texts with, goes out and arrests P.H. for
12:19PM 4 him basically on command. And there's some unintended
12:19PM 5 consequences, I submit to you, because when she gets arrested,
12:20PM 6 somebody at Amherst calls the feds and they come to interview
12:20PM 7 her. And this defendant, he finds out about it.

12:20PM 8 Shortly after that, P.H.'s attacked in a bar by his
12:20PM 9 trusted and loyal ally and drug-dealer friend, Charm, Jessica
12:20PM 10 Leyland.

12:20PM 11 And what does Charm tell P.H.? Quote, I heard you
12:20PM 12 were talking to the feds. I'm going to fucking kill you, you
12:20PM 13 snitch.

12:20PM 14 Pretty clear that she's intending that as a threat,
12:20PM 15 pretty clear that it's in relation to P.H. talking with law
12:20PM 16 enforcement, and pretty clear that it's in relation to talking
12:20PM 17 to the feds, which was an interview about him.

12:20PM 18 October 17th, 2019, a few months after that, P.H.
12:20PM 19 secretly testifies before a federal grand jury. He doesn't
12:20PM 20 know it.

12:20PM 21 November. A few months after that interview with
12:20PM 22 federal law enforcement, a few months after Charm, one of his
12:20PM 23 trusted allies, had attacked P.H. in a bar and called her a
12:21PM 24 snitch, threatened to kill her, the defendant's downstairs in
12:21PM 25 a basement with C.C. and Crystal Quinn. And C.C. came here

1 and she testified to you about what happened.

2 And I submit you if you close your eyes, you can
3 probably picture it. They're down in that basement with the
4 bar and the dart room -- the dart board, rather, and C.C. told
5 you that Peter laid out two 8 Balls of cocaine, which I submit
6 to you is a pretty significant amount for three people to use
7 in one sitting. And they're getting incredibly high on
8 cocaine. And this defendant brings up the topic of P.H. being
9 snitch.

10 And the words that he uses to C.C. and Crystal, he
11 says, she's a rat, she's a snitch bitch. And C.C. told you he
12 wasn't joking. I think she was asked that by defense counsel,
13 I think she said he wasn't joking, he was angry. She
14 described how the defendant was getting revved up and how he
15 was getting Crystal Quinn revved up. And that was his close
16 ally.

17 If you want to think about the control that this
18 defendant had over Crystal Quinn, Katrina Nigro described
19 walking into the upstairs one day and seeing Crystal Quinn
20 doing a line of cocaine off this defendant's genitals. That's
21 the type of control he had over Crystal.

22 And you know what happens next, it's exactly what
23 this defendant intended. He gets Crystal Quinn, he induces
24 her to do what he wants her to do, which is threaten P.H.

25 The defendant later admits when he's in jail awaiting

1 trial on this case, he later admits to Ben Rivera that he
2 wanted this woman to send a message to P.H., but he was pissed
3 that she did it by Facebook Messenger 'cuz that's traceable.
4 I guess hindsight was 20/20 for the defendant.

5 At the time, I submit to you, when he's ripping two
6 8 Balls of cocaine with Crystal, he was egging her on. What
7 he told Ben Rivera is that he intended her to send that
8 message, to call P.H. a snitch.

9 And what does Crystal Quinn say to her? There's some
10 typos in it because -- I submit to you because Crystal Quinn
11 was incredibly high on cocaine, and here's what she writes.
12 I've -- I've done my best to make reasonable inferences and
13 correct the typos based on where keys are on the keyboard.

14 She says, hey, you rat ass bitch, it's Crystal. I'm
15 going to see you, and when I do, well, use your imagination,
16 bitch. You snitch junkie cunt.

17 I'm not gonna read the whole thing right now because
18 we're running out of time, but the one other sentence in here
19 I want to hit is: Plan on nothing. Peter knows better, you
20 fucking narc.

21 "Peter knows better," a reference to this defendant
22 who she was sitting next to when she sent the message. And
23 "you fucking narc," narc is interchangeable with rat, it's
24 interchangeable with snitch. It's exactly what he wanted to
25 convey to P.H. Shut up. Don't get on that witness stand.

1 Don't talk to law enforcement about me. Shut her down.

2 Attempt after attempt, he sued her in State court.

3 She doesn't have two dimes to rub together. You met P.H.

4 Effort after effort, to prevent her from ever getting in that

5 chair and talking to a room of people like you. He failed,

6 because she came here anyway.

7 Counts 6, 7, and 8 have something called Section 2

8 liability, it's called aiding and abetting, and the judge is

9 going to explain what that means to you and better than I can

10 and in more detail.

11 But aiding and abetting means you don't have to find

12 that the defendant himself sent the messages for him to be

13 guilty of witness tampering. If he induced Crystal Quinn to

14 send the messages, if he caused Crystal Quinn, if he aided and

15 abetted her in doing it, you can find him guilty of witness

16 tampering.

17 I suggest to you that when you review the elements

18 with the judge on Counts 6, 7, and 8, you'll be convinced

19 beyond a reasonable doubt that we've proven each of them to

20 you. Find him guilty of witness tampering with respect to

21 P.H., because his conduct and his choices make him guilty.

22 I want to wrap up. How much time do I have?

23 **MR. TRIPI:** Four minutes.

24 **MR. COOPER:** Four minutes? I'm good. Last page.

25 Let me have some water first.

1 So, I always try to come up with, like, a theme,
2 right? In these -- when I give an opening statement, a
3 closing.

4 And the defense attorneys, in their opening
5 statement, their theme was choices. They told you this case
6 is all about choices. They made choices. These women all
7 made choices. G.R., L.L., wait until you hear from them.

8 Now you've heard from them, and I agree, I'm taking
9 the theme, I love it, this case is about choices. It's about
10 his choices. It's about the defendant's decision, his choice,
11 to turn a strip club into a drug-infested dungeon where the
12 chains of addictions keep young women coming back every single
13 day so that this defendant could profit a little more off of
14 the exploitation of their body.

15 His choice to make that his business model. He did
16 it because it got him rich. Like when Wayne VanVleet was
17 dropping thousands of dollars from his pockets to lick and
18 finger drug addicts until he came in his pants, he did it
19 because it gave him constant access to drug-addicted women
20 that he could sexually exploit himself.

21 He did it because when you have powerful people like
22 Judge Michalski going upstairs to have sex with the vulnerable
23 drug-addicted women, you become powerful. You get forged
24 marriage certificates when the judge signs the protective
25 order on controlled buys going on in your club, that was Judge

1 Michalski.

2 When you cater to the elicit sexual desires of
3 powerful men, you become powerful, and that's another reason
4 that he did.

5 This trial's about the defendant's decision to enter
6 into a corrupt agreement to with DEA Special Agent Joe
7 Bongiovanni, to protect him, to keep him on retainer, to
8 provide protection on an as-needed basis.

9 It's about the defendant's decision to cause Crystal
10 Quinn and induce her to threaten P.H., to keep her off that
11 witness stand, something that only he benefited from.

12 They were right. This case is about choices. And
13 this defendant, he made his choices.

14 You've heard during the last two months about nearly
15 two decades of Peter Gerace's choices. And choices have
16 consequences.

17 When you go in the back to deliberate, I ask you to
18 apply a simple formula: Facts, plus law, equals verdict.

19 If you focus on that, and if you bring your common
20 sense life experience into that room with you, I expect that
21 you will return a verdict that's consistent with justice in
22 this case, and that will be a verdict of guilty on each and
23 every single count in the indictment.

24 I appreciate your patience listening to me talk for
25 three hours. In a little while, Mr. Tripi's going to come up

1 on rebuttal, but I want to say thank you for your close
2 attention over the course of the last two months on behalf of
3 myself, and Casey Chalbeck, and Joe Tripi, and the United
4 States.

5 **THE COURT:** Okay. Thank you. Folks, we are now
6 going to take our lunch break, we'll go 45 minutes, so back
7 here at 1:15.

8 Please remember my instructions still about not
9 communicating about the case. Don't use tools of technology
10 in any way whatsoever to learn anything about the case or to
11 communicate about the case. If there's any news coverage of
12 the case on the TV or radio or anywhere, on computers,
13 newspapers, don't read or watch or listen to it. And please
14 don't make up your mind until you start deliberating, which
15 will probably be tomorrow morning.

16 So, 1:15. Thanks, very much.

17 (Jury excused at 12:29 p.m.)

18 **THE COURT:** Okay. Anything before we break?

19 **MR. COOPER:** Nothing from us, Judge.

20 **MR. FOTI:** No.

21 **THE COURT:** I just want to briefly address
22 Mr. Tripi's and Mr. Soehnlein's letters from -- from
23 yesterday.

24 **MR. TRIPI:** Yes.

25 **THE COURT:** I didn't see a lot of disagreement

1 between the two of them actually. I think Mr. Soehnlein's
2 pitch was they have not opened the door to anything yet, and I
3 didn't read your letter as suggesting that they had.

4 **MR. TRIPI:** Yeah, Judge, I -- I -- I focused on their
5 summation and what I -- the permissible bounds of rebuttal.
6 In Mr. Soehnlein's responsive letter, he indicated that he --
7 they've not opened the door just by virtue of their cross.
8 Can -- I agree that -- with what you just said. Candidly,
9 I've not yet done the research on whether a cross alone can
10 open it, I've had someone looking into it. If I find
11 anything, I'll let you know. But I -- I -- as I stand here in
12 this moment in time, I agree.

13 **MR. FOTI:** Judge --

14 **THE COURT:** The other -- the other issue would be is
15 it truly rebuttal if you bring it up in rebuttal. In other
16 words --

17 **MR. TRIPI:** Well, right.

18 **THE COURT:** Yeah. So --

19 **MR. TRIPI:** I have never seen a case where they've
20 opened it in cross, but I wanted to take a look.

21 **THE COURT:** Yeah. But if they did open it in cross,
22 then Mr. Cooper should have said something about it --

23 **MR. TRIPI:** Yes.

24 **THE COURT:** -- not you in rebuttal.

25 **MR. TRIPI:** Well --

12:31PM 1 **MR. FOTI:** Judge, I -- I didn't see Mr. Soehnlein's
12:31PM 2 submission, and I'm doing the closing. Part of that was
12:31PM 3 because I was focused on the closing yesterday. But I
12:31PM 4 certainly -- and it would be good to sort of parse this out
12:31PM 5 now so I know how to -- to appropriately fashion this
12:31PM 6 discussion in my closing. But I do intend to, like, I think
12:31PM 7 every defense closing I've ever seen or done talk about
12:31PM 8 insufficiency of evidence and witnesses you that didn't hear.
12:31PM 9 And I understand -- I read Mr. Tripi's submission, and I
12:31PM 10 understand the argument that can be made while defendants --
12:31PM 11 defense attorneys have subpoena power too, I don't really have
12:31PM 12 an objection to that comment being made at some point during
12:31PM 13 the rebuttal. I -- what I would object to is burden
12:31PM 14 shifting --

12:31PM 15 **THE COURT:** Right.

12:31PM 16 **MR. FOTI:** When you say anything beyond that when
12:31PM 17 you're saying they should have called witnesses, you could
12:31PM 18 expect that those witnesses would've testified favorably for
12:31PM 19 the government --

12:31PM 20 **THE COURT:** Yep.

12:31PM 21 **MR. FOTI:** -- that shifts the burden.

12:31PM 22 **THE COURT:** And I -- and I would go one step further
12:31PM 23 and say that anything you say needs to reenforce that the
12:32PM 24 defendant does not have a burden.

12:32PM 25 **MR. TRIPI:** Yeah, I think I dropped a footnote in how

1 I usually say it, or the gist of what I usually say.

2 **THE COURT:** Yeah.

3 **MR. TRIPI:** And I was -- I actually do think the
4 caselaw, not to go as far as he's concerned about, the caselaw
5 actually permits the government to go a half a step further
6 than I had done in the past which is to say you can infer that
7 those witnesses would not have helped the defense, that's not
8 a burden shift under the 2nd Circuit. And so I've never
9 actually gone that far, I guess it would be a matter of degree
10 when I hear the defense.

11 **THE COURT:** Yeah. And I -- I just want you to
12 cautious because I think that -- that any -- any remarks you
13 make in that regard ought to be couched in the context of
14 we've got the burden.

15 **MR. TRIPI:** I always do that. I've always done that.

16 **THE COURT:** Okay. Good. Then we're all on the same
17 page it sounds like.

18 **MR. TRIPI:** Yes.

19 **THE COURT:** Mr. Tripi, I think you have 32 minutes by
20 my time.

21 **MR. TRIPI:** I have 31. I'll graciously take the
22 extra minute.

23 **THE COURT:** Yeah. I -- I was paying pretty close
24 attention, and I had that at two minutes short of three hours,
25 so --

12:33PM 1 Okay. So, we will be back at 1:15. You're ready to
12:33PM 2 go then. You're still thinking two, two and a half?
12:33PM 3 **MR. FOTI:** Yeah, probably about that, yeah.
12:33PM 4 **THE COURT:** Good. Great. Terrific. Again, you've
12:33PM 5 got three and a half.
12:33PM 6 **MR. FOTI:** Understood.
12:33PM 7 **THE COURT:** So I'm not cutting you off at all. And
12:33PM 8 if you want to take a break at any point, that's fine. If you
12:33PM 9 want to go right through, that's fine, too.
12:33PM 10 **MR. FOTI:** Okay, thanks.
12:33PM 11 **THE COURT:** Okay. Thanks, everybody.
12:33PM 12 **MR. TRIPI:** Thanks, Judge.
12:33PM 13 **THE CLERK:** All rise.
12:33PM 14 (Off the record at 12:33 p.m.)
01:16PM 15 (Back on the record at 1:16 p.m.)
01:16PM 16 (Jury not present.)
01:16PM 17 **THE REPORTER:** All rise.
01:16PM 18 **THE COURT:** Please be seated.
01:16PM 19 **MR. COOPER:** I think I'm missing my better half here.
01:16PM 20 He said he was on his way two minutes ago, so he should be
01:16PM 21 here.
01:16PM 22 **THE COURT:** That's okay.
01:18PM 23 **THE CLERK:** We are back on the record for the
01:18PM 24 continuation of the jury trial in case numbers 19-cr-227 and
01:18PM 25 23-cr-37, United States of America versus Peter Gerace, Jr.

01:18PM 1 All counsel and parties are present.

01:18PM 2 **THE COURT:** Are we ready to go?

01:18PM 3 **MR. FOTI:** Yes, Judge. I meant to ask earlier, are
01:18PM 4 we permitted to use the verdict sheet? Or, I don't know if we
01:18PM 5 ever -- if there was any ever determination of whether the
01:18PM 6 proposed verdict sheet was all set, but --

01:18PM 7 **THE COURT:** If -- if both sides approved the verdict
01:19PM 8 sheet?

01:19PM 9 **MR. FOTI:** We didn't have any objection to it.

01:19PM 10 **MR. COOPER:** We don't have any objection to the
01:19PM 11 proposed verdict sheet, Judge. I looked at it the other day
01:19PM 12 when it was brought over.

01:19PM 13 **THE COURT:** Okay. And do you have any objection to
01:19PM 14 him using it with the jury?

01:19PM 15 **MR. COOPER:** Like showing it to them?

01:19PM 16 **MR. FOTI:** Yeah, yes.

01:19PM 17 **MR. COOPER:** No, they're going to see it anyway.

01:19PM 18 **THE COURT:** Yeah, great.

01:19PM 19 Okay. Let's bring them in, please, Pat.

01:22PM 20 (Jury seated at 1:22 p.m.)

01:22PM 21 **THE COURT:** The record will reflect that all our
01:23PM 22 jurors again are present.

01:23PM 23 Mr. Foti, you may begin.

01:23PM 24 **MR. FOTI:** Thank you, Your Honor.

01:23PM 25 Good afternoon.

01:23PM 1 **THE JURORS:** Good afternoon.

01:23PM 2 **MR. FOTI:** So, it's kind of a weird dynamic because
01:23PM 3 we've spent almost two months together, but this is the first
01:23PM 4 time I actually get to talk to you directly. You heard my
01:23PM 5 name, I'm Mark Foti. Along with my cocounsel, my tall and
01:23PM 6 nerdy friend and cocounsel, Eric Soehnlein, we represent Peter
01:23PM 7 Gerace.

01:23PM 8 Now, I may refer to him sometimes as Mr. Gerace, and
01:23PM 9 sometimes I may refer to him as Peter. That's how I know him.
01:23PM 10 You'll know who I'm talking about when I do.

01:23PM 11 He sat there for two months just listening to
01:23PM 12 witnesses that the government cherry picked out of over
01:23PM 13 15 years of his life to come in here and sling mud at him.

01:23PM 14 He sat there for two months just watching these
01:23PM 15 witnesses get up on the stand, witnesses who were paid,
01:24PM 16 witnesses who had charges pending, witnesses who had
01:24PM 17 credibility issues, and he took it, and he endured. And he
01:24PM 18 did it because he knew that at some point we were going to
01:24PM 19 come to the moment that we're almost at, the moment when you
01:24PM 20 folks are finally going to have this case, the moment when you
01:24PM 21 folks are finally going to be able to evaluate the evidence in
01:24PM 22 this case.

01:24PM 23 Now your job, and I know you know this, your job
01:24PM 24 doesn't end with what the government tells you to think. Your
01:24PM 25 job doesn't end when the government gets up here and tells

01:24PM 1 you, well, you heard these things from this witness, so you
01:24PM 2 should just accept that as fact. That's clearly not how this
01:24PM 3 works.

01:24PM 4 The government referred to something Mr. Soehnlein
01:24PM 5 said in his opening statement that this is a case about
01:25PM 6 choices. And I understand why the government made the point
01:25PM 7 it did and said there are allegations here that Mr. Gerace
01:25PM 8 made bad choices related to the charges. They told you that
01:25PM 9 there's choices here that you can consider related to things
01:25PM 10 that have been alleged against Mr. Gerace, and that is part of
01:25PM 11 this case.

01:25PM 12 There's a lot of choices that are part of this case.
01:25PM 13 There are the choices of individuals to apply and work at a
01:25PM 14 strip club. To do drugs for the very first time. To continue
01:25PM 15 using drugs. To engage in commercial sex acts, whether
01:25PM 16 Mr. Gerace knew about it or not, whether they were happening
01:25PM 17 in or out of the club. Those are all choices.

01:25PM 18 There's also choices of investigators, individuals
01:25PM 19 who had the decision on how to collect evidence for this case,
01:25PM 20 what to present to you. And the decisions of what tactics not
01:25PM 21 to pursue, even though it would mean less evidence for you to
01:26PM 22 consider.

01:26PM 23 There's the choices of witnesses. To lie. To lie to
01:26PM 24 investigators when they go talk to them. To lie at the grand
01:26PM 25 jury. To lie in subsequent meetings with the government, and

01:26PM 1 to lie at all these other proceedings under oath. Those are
01:26PM 2 the decisions of the witnesses, many of whom testified before
01:26PM 3 you during this trial.

01:26PM 4 And there's the decisions by prosecutors to call
01:26PM 5 those witnesses anyway knowing that they've lied in the past,
01:26PM 6 and carefully cure their direct examinations as much as
01:26PM 7 possible to steer away from reality, to steer away from all
01:26PM 8 their biases and, instead, present you with a narrative
01:26PM 9 consistent with what they were trying to sell you throughout
01:26PM 10 this case.

01:26PM 11 But this is not just a case about choices, this is a
01:26PM 12 case about government overreach.

01:27PM 13 At the beginning of the trial, Mr. Soehnlein talked
01:27PM 14 about all the resources the government has. I, during the
01:27PM 15 cross-examination of Mr. Burns, went through a long list of
01:27PM 16 dozens of names of agents who were involved in interviews
01:27PM 17 related to this investigation or, as clarified, some sort of
01:27PM 18 offsets of the investigation. They, on redirect it was
01:27PM 19 pointed out that that number can be inflated when you count
01:27PM 20 all of those individuals who are involved at different points
01:27PM 21 like search warrants.

01:27PM 22 You saw this courtroom just completely filled up a
01:27PM 23 few moments ago, of people who came in support of the
01:27PM 24 government in this case. Those resources are endless. The
01:27PM 25 resources to provide financial benefits to witnesses, the

ability to put charges on individuals and use it as leverage.

But despite all those resources and despite the fact

that Mr. Gerace is one man, and we're two attorneys and a

paralegal, representing here and presenting a defense, it all

does balance out. And it balances out because of you folks.

And it balances out because if do you your job and you follow

the instructions, it's not about just what the government

collected as part of their resources, and what they curated to

present to you. It becomes about something much bigger than

that.

This is a case where, like any criminal case, you

apply a standard of proof, of proof beyond a reasonable doubt.

And you presume Mr. Gerace innocent.

We say those things all the time. You heard it at

the beginning of the trial. But that's powerful stuff when

you stop and think about what your responsibility is here

about how things are balanced out and how Mr. Gerace gets a

fair trial. It's not that a scenario is presented to you

factually and the government argues there's an inference you

could draw, and you just have to accept that inference because

that's the one the government selected. It's not that at all.

If there's other inferences, if there's other reasonable

hypothesis of innocence.

You're presuming Mr. Gerace innocent. You're holding

the government to the burden. You are going to look at the

1 evidence and evaluate and look at all the different reasons
2 why the one version of events and the one argument the
3 government presented may not be correct.

4 Now, I want to talk to you a little bit more about
5 proof beyond a reasonable doubt.

6 The government acknowledges their burden, they
7 reference it, but they don't talk about it in great detail
8 during their closing. I want to talk about it a little bit
9 more before we go into -- to some the case.

10 The judge is going to instruct you on the law. And
11 when the judge instructs you on the law, anything he says
12 obviously goes in terms of that. I'm going to talk a little
13 bit about what I expect you'll hear generally. I don't --
14 nothing I'm gonna say is anything other than my expectation as
15 to what you'll hear from -- from Judge Vilardo.

16 Reasonable doubt is a doubt that a reasonable person
17 has after carefully weighing all the evidence or lack of
18 evidence. It's a doubt that would cause a reasonable person
19 to hesitate in a matter of importance in his or her personal
20 life.

21 Proof beyond a reasonable doubt must be proof that's
22 so convincing that a reasonable person would not hesitate to
23 rely upon it in making an important decision.

24 I expect you're gonna hear words similar to that from
25 Judge Vilardo, and I want you to focus on that, the idea of

hesitation. That's the way this is framed for you. That if you are hesitant to accept something as being true, or even if you don't necessarily hesitate but you think a reasonable person would hesitate, that's reasonable doubt. That's it.

That is so simple, and yet so powerful, and is the reason Mr. Gerace gets a fair trial. And it is a reason that we've been waiting for you this entire time.

Now, mindful of those points, the closing remarks I'm going to give you are not intended in any way to limit the potential reasonable doubt in this case, not at all. I'm not any smarter than any of you folks. As smart as Mr. Soehnlein may be, he's not any smarter than any of you folks. Each one of you, when evaluating the evidence, are in a position to pick up on inconsistencies, pick up on things that didn't make sense, pick up on things about the government's argument that were not complete or were not fair.

And when you think of those things for the charges, you're not limited to say, well, the defense didn't bring that up. That's not at all the case. We could have not gotten up here at all to talk to you at all during the closing. It wouldn't matter, you would still go back and do your job. You would still hold the government to their burden. You would still push back against government overreach.

I don't expect that I'm going to be as dynamic as Mr. Cooper. I'm certainly not going to be able to hit the

01:32PM 1 same volume that he hits. It doesn't matter.

01:32PM 2 In the end, we're relying on you, and all I'm gonna
01:32PM 3 do over the course of the next -- I -- I hesitate to estimate,
01:32PM 4 I don't think it will be as long as the government's comments,
01:32PM 5 but over -- during the course of this closing, I'm just gonna
01:32PM 6 point out some observations, some observations about the proof
01:32PM 7 that I think are points of reasonable doubt, and some
01:32PM 8 observations about the arguments that have been presented to
01:32PM 9 you by the government. Why I don't think they really hold up
01:32PM 10 when you look at things a little bit closer when you
01:32PM 11 critically evaluate the evidence in regards to -- to the
01:32PM 12 charges that are before you.

01:33PM 13 So, my comments are not going to be perfectly
01:33PM 14 organized. I have a little bit of an outline that I'm
01:33PM 15 referring to, but I'm not reading off a script. I am going to
01:33PM 16 talk to you generally about, first, the background of this
01:33PM 17 case, what leads up to it. What leads up to the charges of
01:33PM 18 Mr. Gerace. Things that you heard in the evidence that you
01:33PM 19 can piece together to -- to better understand how this all
01:33PM 20 came about.

01:33PM 21 Then I'm going to talk to you about the evidence, the
01:33PM 22 lack of evidence, and I'll review the charges with you. And
01:33PM 23 then I'll finish up with some closing remarks. Okay?

01:33PM 24 So, where did this case begin two months ago?

01:33PM 25 It seems like a lifetime ago, but if we look back to

the first few witnesses after Mr. Bongiovanni's ex-girlfriend, we were talking about a search in 2009. So we are already going back about 15 years.

Now, what happened in 2009? You heard testimony from a probation officer, Probation Officer Lepiane. You heard testimony from an FBI agent.

An interesting thing happened at the very beginning of the case on direct examination. There was discussion of what the search was going to be of Pharaoh's. And during the direct examination, there was very little reference to the fact that part of the discussions leading up to the search, a whole lot what was going on behind the scenes in terms of the investigation was that they didn't know if there was drugs at Pharaoh's.

They had heard from two individuals in August, two individuals who ended up being witnesses here today, or in this trial, that there was drug use in Pharaoh's. K.L., G.R. And by the way, what was represented by them was very different than what they're testifying to 15 years later. You heard a little bit about that with Ms. K.L., and we'll talk about that in a little while.

But they have information that they're going to pursue, try to corroborate, to determine whether these witnesses are credible, whether there's actual -- actual proof consistent what they've heard. And they agreed to do a search

1 at Pharaoh's in 2009, and it was specifically done on
2 Halloween morning, a Saturday morning, assuming that there's
3 going to be partying the night before on a Friday night,
4 parties related to -- to -- to Halloween.

5 And on the morning of -- the early hours of the
6 morning, only a few hours after the place closes, multiple law
7 enforcement agencies show up. The FBI's there, probation is
8 there, and the Cheektowaga police is there. There's K-9
9 units. They go in to Pharaoh's, and they don't find any drugs
10 at all. This is 2009.

11 This is part of the case that's been presented to you
12 because, as we're going to talk about in a little bit, they
13 give you such a wide spread of time, and they give strategic
14 advantages to the government in their presentation of proof,
15 how they can cherry pick evidence.

16 But we go all the way back to 2009, they're alleging
17 this is a drug premises at the time. They're alleging back in
18 2009 there is a conspiracy to distribute controlled substances
19 from Pharaoh's. And they go in there in the early hours of
20 the morning on Halloween and they don't find drugs, they don't
21 find paraphernalia, they don't find wrapping, packaging
22 associated with it. They don't find anything that
23 corroborates the rumors and allegations that had amounted to a
24 belief that Peter Gerace is distributing drugs out of
25 Pharaoh's back in 2009.

1 There was video at Pharaoh's back in 2009. You heard
2 testimony about that. Nobody could remember whether they
3 seized it, whether they looked at it, whether they went
4 through it at all. I think you would probably find that if
5 they did, they would find something very similar to the video
6 that was seized in 2019. Nothing of relevant value. No drug
7 use. No drug transactions. No drugs on -- anywhere on the
8 cameras that are recording constantly. A business that makes
9 sure that they have close to 50 cameras throughout the place
10 not just live streaming, but recording so that there is
11 evidence of what is going on in that club.

12 We don't really know much about what was seized or
13 what was looked at back then. Maybe they didn't look at the
14 cameras, but they were there. There were cameras back then,
15 you heard testimony of that. No drugs, no video, no evidence
16 at all of drugs back in 2009. And no charges. No criminal
17 charges.

18 And we're going to talk about the Bongiovanni-related
19 component of those charges in a little bit. You heard just on
20 the closing argument the very first thing they're talking
21 about, well, one of the very first things they're talking
22 about is this search in 2009 suggesting that somehow
23 Mr. Bongiovanni derails the investigation.

24 The investigation that Tom Herbst had wasn't with
25 Mr. Bongiovanni. He didn't defer to Mr. Bongiovanni.

01:38PM 1 Mr. Bongiovanni wasn't his supervisor. Tom Herbst spoke to
01:38PM 2 the U.S. Attorney's Office, he was speaking to prosecutors.
01:38PM 3 They're the ones who were going to make the decision on
01:38PM 4 whether to pursue changes. And no charges come out of it.

01:38PM 5 The whole idea that Mr. Bongiovanni had anything to
01:38PM 6 do with it makes no sense. There's no allegation that
01:38PM 7 Mr. Bongiovanni ever talked to the prosecutor.

01:38PM 8 The reality is there was no evidence of it. That's
01:38PM 9 why it died back in 2009.

01:38PM 10 And as this case went forward, you heard a little
01:38PM 11 indicia and snippets of things that were going on behind the
01:38PM 12 scenes. It wasn't presented during direct examination, it
01:38PM 13 wasn't really presented to you, it was generally inconsistent
01:38PM 14 with the idea that Mr. Bongiovanni put a cloak over Pharaoh's
01:38PM 15 and it was protected. But during the cross-examinations it
01:38PM 16 came out that there were other attempts to investigate
01:39PM 17 Pharaoh's at various times over the course of the decade,
01:39PM 18 multiple attempts at undercover buys.

01:39PM 19 We don't know the full extent of any of that. We
01:39PM 20 just know that no evidence came out of it that was -- was put
01:39PM 21 in front of you during the course of this trial.

01:39PM 22 So, 2009. The next search is ten years later. What
01:39PM 23 happens in between?

01:39PM 24 Katrina Nigro, divorce. Okay? She got mentioned
01:39PM 25 just a few times on the government's closing. Which is

surprising, because she's really the inception of this entire investigation. She really is their star witness.

Katrina Nigro, in 2016, before she ever connects with the U.S. Attorney's Office, is telling Peter Gerace in voicemails, I will destroy you. I will have your kids taken away. She's calling CPS and -- you saw the moment on the stand, I'm sure you recall that -- that was counselors, they were doing it. Then confronted in fact that she told -- she acknowledged the government at some point earlier she had, okay, yeah, I called one time, the rest were counselors, that was it.

What about the email you sent from hornyhamster69?

Okay, yeah, I did send that too.

Just lying to you, and changing her testimony as she's confronted. A pattern that you saw with multiple witnesses in this trial.

Katrina Nigro, back in 2016, was saying I will destroy your life. She was trying to put false charges on Mr. Gerace.

She, herself, was charged with criminal contempt after being told Mr. Gerace doesn't want to pursue charges against you, just leave him alone. She continued and continued until she was charged. Then she continued again after a judge told her do not have contact, and she was charged again. Then she continued again, and she was charged

again.

The government put up text messages suggesting that she's -- that because Peter Gerace was talking to friends about it, because they were laughing about the fact that she couldn't stop, she wouldn't leave him alone, and that she was finally charged, that somehow she's the victim of that all that?

She was making choices to continue on, to continue to try to be involved in Peter Gerace's life despite a court telling you to stop. And she admitted that she had a spoof -- or, excuse me, a stalker Facebook account, an account that she had for some business and she changed it to a fake name so she could use it to -- as a stalker Facebook account, that was her words.

She used spoof phone numbers, and said something about, oh, Peter's the one who taught me how to do that. There's no evidence of that whatsoever other than her saying that. What we know is that she owns up, yeah, I admitted in the past that, yes, I was using spoof phone numbers to call Peter.

And what's more significant than the fact that she was violating a court order and that she wouldn't leave him alone and there's this clear bias that exists, is what else she was doing at that timeframe. She kept trying to put false charges on Mr. Gerace. She demonstrated all the way back then

1 what she's willing to do.

2 And, by the way, she didn't just try once. She
3 didn't just try twice or three times. She went from police
4 agency to police agency.

5 The government may have made some arguments here,
6 well, Detective Trotter ends up being friends with Mr. Gerace
7 and ends up having some communication with him along the way,
8 maybe he's the one driving all of this against Katrina Nigro.
9 That's totally bogus.

10 She went to the state police first, and she said oh,
11 it was because of the geographical location that I went to
12 them. That's why I didn't go to Amherst, I went to the state
13 police first.

14 But then when they vet the charges and realize
15 they're bogus, and they don't charge her with anything at that
16 point, they just say well, you know, this -- this is not
17 legitimate, we can't file charges based on what you're
18 presenting us with. She just keeps going to different police
19 agencies until she's finally charged by the Erie County
20 Sheriff's Office with filing charges -- or, filing false
21 reports against Mr. Gerace.

22 That's who Katrina Nigro is. Somebody who is willing
23 to use the government to pursue her grudge against Mr. Gerace.
24 She demonstrated that back in 2016. Back when she was telling
25 him she is going to ultimately destroy him. That's her

01:43PM 1 objective.

01:43PM 2 Now, what happens in 2019? The next search at
01:43PM 3 Pharaoh's that you've heard about.

01:43PM 4 And is this one really different than the last one?
01:43PM 5 You saw pictures yesterday pulled up exhibits of some of the
01:43PM 6 proof of drugs. Did anybody realistically look at those
01:43PM 7 pictures and think, oh, yeah, that's consistent with drug
01:43PM 8 trafficking? A couple packages of, like, a -- like a vape pen
01:43PM 9 or something like that? A couple of tiny things in the
01:43PM 10 entirety of Pharaoh's in 2019?

01:44PM 11 And they seized the video, and they go back and look
01:44PM 12 at weeks worth of video, and don't see on a single camera any
01:44PM 13 footage showing any drugs at all. No perceived drug
01:44PM 14 transactions, no contraband, nothing.

01:44PM 15 But 2019 was different than 2009. Some of you may
01:44PM 16 have a number of ideas why it was. There's one in particular
01:44PM 17 that I want to talk about.

01:44PM 18 2019, you heard the search was publicized.

01:44PM 19 2009, they did it in the early hours of the morning,
01:44PM 20 they made efforts to keep it quiet, to just go in, see if the
01:44PM 21 drugs were there, and leave.

01:44PM 22 What did they do in 2019? They put it on the news.

01:44PM 23 And what was that? That was a beacon to anybody who
01:44PM 24 had a grudge against Mr. Gerace, anybody who wanted a benefit
01:44PM 25 from the government, anybody who was willing to get lined up

1 to take that stand and receive something in return.

2 That's the difference between 2019 and 2009. And
3 that's why we're here today.

4 Because when it goes up on the news, what happens?
5 Katrina Nigro gets on the phone, calls a hotline, says I have
6 all kinds of information about Mr. Gerace.

7 Not the first time she makes a false report. It's
8 not the last time she makes a false report. But she responds
9 to the publicity, and immediately we're off to the races.

10 What happens after Katrina Nigro gets in contact with
11 the government, they meet next month and she goes in the grand
12 jury? They form what she described as a partnership. And
13 that is what the evidence shows. Katrina Nigro is the one
14 that launches this whole thing.

15 Yes, there were witnesses that made allegations way
16 back in '09. Nothing came of it.

17 K.L. in '09 said there was drugs. She didn't say
18 anything about what she ultimately testified to here. She
19 said there were Lortabs in the club that she could get from
20 somebody else, she never said Peter Gerace ever gave her
21 Lortabs at all.

22 There was G.R. had spoken to them. There was other
23 individuals who had spoken to the government. None of them
24 advanced this investigation forward.

25 Katrina Nigro moves the investigation forward. She

1 makes all these allegations of upstairs there being high-end
2 prostitution. She starts naming big names, celebrities,
3 really, really exciting allegations. And she inflicts every
4 part of this investigation going forward.

5 She starts helping the government find witnesses.

6 How could we rely on anybody that Katrina Nigro
7 contacted first? Especially because we don't know what
8 communication they had.

9 She says oh, I, gave -- I gave the government my
10 password to my -- my social media. Come on. No, she didn't.
11 Nobody remembers that. Nobody looked at her Facebook records.

12 And frankly I don't know which is worse, the idea
13 that she was lying to you about something else to try to give
14 herself some credibility, or the idea that she would have
15 given the password and the government wouldn't check knowing
16 that she was talking to people that she was saying were
17 witnesses.

18 How many other people did she talk to? We don't
19 know.

20 We know that there definitely are witnesses who
21 testified at this trial that she did communicate with. You
22 heard at least one example of K.M. getting involved when
23 Katrina reaches out to her and says, do you want to get in on
24 the lawsuit, a secret grand jury, Peter will definitely lose.

25 Come on. That's how somebody gets introduced to this

01:47PM 1 investigation? That's somebody who apparently had relevant
01:47PM 2 information? It starts with Katrina Nigro saying, do you want
01:47PM 3 to get into in on this lawsuit?

01:48PM 4 Katrina Nigro is giving interviews to the Buffalo
01:48PM 5 News where she's acknowledging that she's part of this
01:48PM 6 investigation, she's on social media talking about it?

01:48PM 7 She gives the government the testimony they're
01:48PM 8 looking for. She talks about clogged buckets of needles that
01:48PM 9 came out of the toilets, just completely nonsensical things.
01:48PM 10 She talks about the upstairs room that she would unlock for
01:48PM 11 Peter and his friends, even though during the course of this
01:48PM 12 trial we learned that she didn't have a key.

01:48PM 13 She talks about giving envelopes to Mr. Bongiovanni,
01:48PM 14 something that you didn't hear testimony from anybody else.

01:48PM 15 She gives them, the government, what they need to
01:48PM 16 fill the gaps to pursue the charges that they've pursued here.
01:48PM 17 And what comes out of that is what you have in front of you,
01:48PM 18 what was referred to by Special Agent Burns as a historical
01:48PM 19 conspiracy.

01:48PM 20 So what is a historical conspiracy? A historical
01:49PM 21 conspiracy is cherry-picking witnesses instead of giving
01:49PM 22 actual direct hard evidence. Just giving you testimony from
01:49PM 23 people from various times who will say things that are
01:49PM 24 completely inconsistent with each other, inconsistent with
01:49PM 25 things that they've said in the past. As long as it's

1 prejudicial to Mr. Gerace, they'll put them up there.

2 There are other things that could've been done to
3 give you evidence besides just historical testimony from
4 questionable witnesses. You heard about different types of
5 investigative techniques.

6 Now, the government is not legally obligated to
7 pursue any of those investigative techniques, they don't have
8 to, the judge will tell you that.

9 The judge, I believe, is going to tell you something
10 about this particular area of discussion that came up
11 yesterday, and it's going to indicate in deciding whether the
12 government has met their burden of proof, you may consider
13 testimony of witnesses and argument by counsel that the
14 government did not use specific investigative techniques. The
15 judge is going to tell you you can consider that.

16 And he's going to tell you, I expect, that you can do
17 that because you should look at all the evidence in the case
18 or lack of evidence in deciding whether Mr. Gerace is guilty
19 or not guilty.

20 There's no legal requirement to use any specific
21 investigative technique, but you are certainly able to
22 consider that in conjunction with your review of the evidence
23 and lack of evidence.

24 Undercover buys, we heard it two different times.
25 And who knows if that's that all there is. That's the two

that we heard about. There was something in 2016, I think 2018, and we heard testimony from K.A. that if you weren't presented testimony later on about the fact that there were these operations that didn't result in any other purchases, you would have been left with the impression by the government that, hey, look, when we try to go do an undercover buy at Pharaoh's, we get one -- we got one with K.A. And that is completely inconsistent with what was really going on back then.

K.A. did a purchase under the table so cameras couldn't see, and she told the individual here's my phone number, if you ever want to do a deal in the future, we've got to do it outside the club. She was worried about being fired if she got caught.

Now, did she get away with it? Sure. There's certain things that, if somebody's careful, they can probably get past the cameras, but it's not with the authorization of management. There was no okay to do that. She specifically said future transactions are outside the club. Did that stop them from going back to the club to try again? No, of course they went back to try again, never got another undercover purchase.

And then you heard about -- about Investigator Santos or New York State Police Santos, who made multiple attempts and said well, I don't think I'm a known commodity so -- and

1 that's why I can't do a purchase. What is that? That's just
2 speculation.

3 What mattered is he went in there in a place that was
4 described way back in the opening as a place that's prevalent,
5 that you can get drugs anywhere, anybody can go in and get
6 drugs, it's available to anybody who walks in through the
7 doors at Pharaoh's, and you heard testimony throughout the
8 trial that attempted to advance that narrative. But what
9 would actually happen when someone went in there and tried to
10 buy drugs? Nothing.

11 There was testimony that at some point they got a
12 little bit of marijuana. That was it. That's not at all
13 consistent with the narrative that was presented to you
14 throughout this trial.

15 Wiretaps. Trying to say that Judge Michalski has
16 anything to do with wiretaps being used is just nonsense.
17 We're talking about a 10-, 15-year period where Peter Gerace
18 was supposedly being investigated at various times, and nobody
19 tries to pursue a wiretap?

20 Well, because Anthony Gerace was on a deconfliction
21 notice that that somehow relates to why they wouldn't pursue
22 one against Mr. Gerace?

23 I mean, here's something that you know because of the
24 evidence, Jeff Anzalone, one of the government's witnesses was
25 on a wiretap, they got one with him. He was talking to K.L.

1 about drug transactions. He was doing it on a recorded
2 wiretap recording. So we actually have more evidence of
3 recording of drug transactions for two of the witnesses than
4 we do against Mr. Gerace. He's on a wiretap of K.L. where
5 she's talking about purchasing Adderall. There's no recording
6 of Mr. Gerace.

7 And I want to make another point, the government did
8 try to offer you testimony, well, here's why that wouldn't
9 have been feasible. You may disagree with their argument of
10 why it's not feasible, or you may agree with it. It doesn't
11 matter. It doesn't change the burden of proof. It doesn't
12 mean that suddenly they don't have to present you as much
13 evidence.

14 Did they have to pursue a wiretap? No. They don't
15 have to pursue any type of technique.

16 But to the extent that there's evidence missing that
17 would have helped you decide this case, you're able to
18 consider the lack of evidence, any lack of evidence, any gaps
19 in the evidence, any shortcomings in the evidence. You
20 consider that, it doesn't change because the government has
21 repeatedly had witnesses testify well, Peter Gerace was
22 friends with a lot of law -- a lot of law enforcement.

23 So what? It doesn't change the verdict. Not at all.

24 No search warrants at any time during this long
25 period of time of 10 to 15 years in some instance, no search

01:54PM 1 warrants, the only search warrant -- they do two search
01:55PM 2 warrants which is more than exists in a lot of cases, don't
01:55PM 3 find anything, and the argument is, well, okay there's no
01:55PM 4 evidence really recovered on those. But do the cameras record
01:55PM 5 anything back in 2013? No, of course not. Cameras don't
01:55PM 6 record seven years worth of recording.

01:55PM 7 But had they went in and did a search warrant at any
01:55PM 8 time in that time span, you really believe beyond a reasonable
01:55PM 9 doubt it would've showed something different than what there
01:55PM 10 was in '09 and 2019? That is nothing but pure conjecture.

01:55PM 11 You have actual in evidence this case that gives rise
01:55PM 12 to reasonable doubt. A search in '09, in the time span that
01:55PM 13 we're talking about here, producing no evidence, that's
01:55PM 14 reasonable doubt.

01:55PM 15 2019, government, during the course of this
01:55PM 16 investigation, has not filed charges against Mr. Gerace yet.
01:55PM 17 They go to a judge, say we think we have allegations
01:55PM 18 supporting probable cause, they get authorization, go in and
01:55PM 19 get just about nothing. That's reasonable doubt.

01:56PM 20 The fact that -- that they'll present arguments to
01:56PM 21 you about well, Mr. Bongiovanni was charged at some point at
01:56PM 22 the end of October has nothing to do with the recordings in
01:56PM 23 the VIP area, they go back further than that. And there's
01:56PM 24 nothing on any one of those cameras consistent with the
01:56PM 25 testimony you've heard from some of the witnesses. No video,

no pictures, no recordings.

They have Mr. Gerace's phone in their possession, his entire life. And they don't have -- you saw what they think is the strongest evidence of any of the charges they have. They have conversations with Anthony Gerace, people that they've essentially alleged are coconspirators.

They had evidence -- they had text messages you heard about with all these other individuals that came up throughout the trial. You didn't see any of those text messages. What does that mean? Would any one of us openly provide our phone and let anybody else just read through the messages? It's extremely personal. It's extremely private. And they have access to all those conversations. And there's nothing about, to say, well, maybe he was trying to be careful, based on what?

Everything they've suggested to you is he's cocky because he has law enforcement friends, he didn't think there was anything to worry about. You're telling me he never during the course of that time made a single drug transaction even though he's supposedly this drug dealer that they've been talking about? Never talks about a single sex act on there. The people that he supposedly -- there was almost nobody that we heard testimony about that he communicated with negotiated for a commercial sex act. I think the only one -- the only one, other than the testimony of G.R. was, was Russell

01:57PM 1 Salvatore.

01:57PM 2 No messages with Russell Salvatore. Nothing of
01:58PM 3 relevance presented to you with that at all. No pictures of
01:58PM 4 Peter Gerace with Russell Salvatore. He was at his
01:58PM 5 restaurant, Russell Salvatore's not in the picture. You're
01:58PM 6 telling me that there's evidence to suggest that Russell
01:58PM 7 Salvatore on a phone call that the witness didn't even pretend
01:58PM 8 to be listening in on, she just said she hears -- she hears it
01:58PM 9 because she's in the room, that's evidence of Peter
01:58PM 10 negotiating drugs or negotiating commercial sex acts?
01:58PM 11 Meanwhile on his phone, nothing? Nothing at all.

01:58PM 12 That gives us a reason to hesitate, doesn't it?
01:58PM 13 That's all it takes. To look at -- to think about this and
01:58PM 14 think they have his entire life in digital format, and we saw
01:58PM 15 the most there was. And they interpreted how they wanted to,
01:58PM 16 they had a text message from the judge with no context to it
01:58PM 17 of, let's go get some pussy there. And they're saying that
01:59PM 18 they think that might have to do with a commercial sex act.
01:59PM 19 Why? There's nothing to support that.

01:59PM 20 That's the government telling you how to think. And
01:59PM 21 that's where you come in and you push back against that.

01:59PM 22 That's where you critically think about the evidence
01:59PM 23 and say that doesn't mean that, there has to be more than
01:59PM 24 that. A message like that does not tell me they're discussing
01:59PM 25 a commercial sex act.

Those messages are all in evidence. If you sift through them, if you go through them all, you'll see the majority of them are about talking of times to meet up go grab a drink. A lot of scheduling issues. These two never can seem to find a time to actually meet up.

But they talk about getting together with their families, with Sue, Judge Michalski's wife. You read those conversations as a whole, they're not much different than any conversation other than one or two messages that were picked out that were maybe vulgar, they're not much different than any conversation you have in your phone, and that's the evidence they picked out of his phone. That's reasonable doubt.

What about the lack of witnesses? They put -- they put on a number of witnesses here, all sort of within a particular circle, all generally connected to each other in some way. Some may not be or may be off on a little bit of an island. We don't know which ones communicated with each other. We don't know which ones Katrina Nigro communicated with. They didn't specifically ask those questions for the most part, and we didn't always ask those questions on cross.

Who knows if they would've been telling the truth? They've lied about a ton of other things.

We've heard that there's all this investigative work with Katrina Nigro, the partner -- the self-described partner

1 to the government here, collecting these witnesses. At the
2 end, what you've got were witnesses that were really cherry
3 picked to advance a particular narrative.

4 Think about the pure volume of dancers over the
5 timeframe that we're talking about. You heard testimony that
6 there were sometimes 50 dancers working a night, in a single
7 night. More dancers, five times as many dancers as you may
8 have heard witnesses from here at this trial. In a night.
9 And they brought in witnesses to cover a 10- to 15-year span
10 of time.

11 And I asked some questions about that. You did
12 interview other people, right? You interviewed other dancers,
13 you interviewed other managers, you interviewed other people.
14 And the answer's yes, and I didn't ask any specifics. And
15 frankly the specifics of any conversations they have would be
16 hearsay, it's not for your consideration what was specifically
17 said during those interviews.

18 But what's significant and what is for your
19 consideration and what is in evidence is the government, on
20 redirect, asked Special Agent Burns, well, did you assess
21 their credibility? Did you assess whether they're
22 forthcoming?

23 Yeah, we determined that some of those -- those
24 witnesses are not credible.

25 They're talking to federal agents. They obviously

1 have to tell the truth. We'll go through just a couple
2 examples.

3 You'll hear what it is that they find not credible:
4 Anything that doesn't fit the government's narrative.

5 So you've got the witnesses that fit the government's
6 narrative, and there is a sea of witnesses out there that we
7 never heard from. Witnesses that there's some evidence,
8 regardless of whether they were telling the truth or not,
9 certainly told the government that they've got it wrong.

10 I want to go through some of the points that I think
11 are relevant to assessing credibility. And -- and some of
12 these points are points that I think you're going to get
13 instructions on that are very specific to things that you can
14 consider as part of credibility.

15 What the government presented during their closing
16 was not arguments for the most part on why you should find
17 these witnesses credible. There was a few examples of, well,
18 this was corroborated by this, or this was corroborated by
19 that, and we'll talk about that momentarily. But they didn't
20 get far into the credibility analysis, and I submit we all
21 know that these witnesses were more than comfortable, the
22 majority of them were more than comfortable getting up here
23 and lying. You saw some of it in realtime.

24 I've never seen anything like it in my career as an
25 attorney when K.L. lied to you folks about things that she

1 didn't think that we had any further follow-up questions on,
2 and then once we got into some specifics, just changed her
3 answer.

4 So a few moments ago, you said something different?
5 You were -- that wasn't true? Correct.

6 No reaction at all.

7 I mean, you saw it happen with other witnesses. You
8 saw it happen with Katrina Nigro quite a bit. When they're
9 caught in something that they're lying about to you, you see
10 some embarrassment, you see some trying to walk it back,
11 trying to explain it, explain why they said something
12 different at different times.

13 Oh, I was confused. Oh, that's not right. Yeah,
14 okay, maybe I said that before, but today is what matters.

15 You heard all these different explanations, Ms. K.L.
16 didn't even try. Yeah, I was lying to you. Stone cold.
17 Under oath. Didn't matter to her at all.

18 She thought she -- when I asked her, are you on
19 Adderall? You take Adderall not prescribed? She comfortably
20 lies to you and says, no, I only take it as prescribed, I have
21 a prescription.

22 I started asking about particular people. Oh, yeah.
23 Okay. Yeah. I forgot that you have a recording of me buying
24 illegal Adderall from somebody. I forgot the jury heard about
25 that. I forgot I was never charged with it, so I forgot that

that recording exists.

So, yeah. Yeah. I was just lying to you guys a little while ago. Big deal. Just totally indifferent to it.

Here's some things that I think you'll hear about when assessing credibility. The judge is going to give you examples of common-sense questions that you should -- you can ask, that you should ask when you critically think about a witness's credibility.

Was the -- was the witness candid, frank, forthright?

Did the witness seem as if he or she was hiding something or being evasive?

How did the witness testify on direct exam compared with the way the witness testified on cross exam? That's a big one. And the government pointed that out in the closing that they gave.

One of their own witnesses, Doug Augustyniak, they said, well, they were -- they weren't nearly as antagonistic during cross-examination. They suggested you shouldn't believe our own witness because there's a difference with how he acted on cross-examination and direct examination, except for the part that we want you to believe. Just disregard the rest.

Very much an example of the government telling you how to think. We're gonna put a witness on the stand and testify under oath. We are going to call that witness to the

stand, and then we're going to tell you which parts to accept of their testimony, just disregard the rest. They're not credible.

Meanwhile, think about the rest of some of the government witnesses, how they shifted from direct examination to cross-examination.

Think about A.A. up there, acting like she was going to start crying with every single question that was asked on direct examination, and then just totally flipping a switch as soon as the cross-examination started.

There is something to that in terms of the witness's credibility, something that you are allowed to assess, something that the judge will tell you that you're allowed to consider as part of critically thinking about the witness testimony.

Was the witness consistent in his or her testimony, or did he or she contradict himself? I gave you an example of it happening within seconds. There were a lot of times throughout this trial where witnesses said one thing during direct, and then contradicted themselves during cross, or during cross, contradicted themselves when they were trying to push back against an answer but realized, okay, maybe I said that in the past. I forgot, so I'll acknowledge it, yes.

The government pointed out some of their own witnesses' contradictions on their own direct examinations.

1 Remember Lou Selva? Lou Selva got up here and gave what
2 appeared to be a credible answer about whether he ever heard
3 Bongiovanni use a racial slur. And then the government said
4 well, we asked you about this specifically just about a year
5 ago, and you told us you did, and he starts changing his
6 answer. The witness who has things to gain for testifying the
7 way the government wants. Oh, yes, yes, I remember it.

8 And you saw Mr. Tripi react to that. You saw him
9 raise his voice at the witness. You saw him say, are you
10 playing games?

11 And with all due respect to Mr. Tripi and Mr. Cooper,
12 if they're willing to yell at the witnesses here in front of
13 all you folks, in front of the judge, in front of defense
14 counsel, and in front of anybody who's sitting in the
15 audience, you can only imagine what happens behind closed
16 doors.

17 The judge will instruct you on other points related
18 to credibility. Whether you choose to believe a witness or
19 how much you choose to believe can also be influenced by bias.
20 If there's any evidence that a witness is prejudiced or
21 hostile towards Mr. Gerace, the judge will instruct you that
22 you are required to view the witness's testimony with caution,
23 to weigh it with care. Subject -- subject it to close and
24 careful scrutiny.

25 We saw that with plenty of witnesses. The government

1 tried to pass off, well, they have good reason to be
2 prejudiced against Mr. Gerace.

3 C.B. had good reason to be prejudiced against Mr.
4 Gerace. She's sending them messages, can't wait to put this
5 guy in jail. That's the type of thing you're supposed to
6 consider.

7 That's something that's supposed to give you caution
8 when you find out that she's sending messages like that to the
9 government. Shouldn't be talking about that on direct, but it
10 comes out that there's more going on behind the scenes there
11 than we know about.

12 She's a witness who tells you she saw a sex act once
13 in the VIP Room, and felt like there wasn't really any
14 follow-up on it, and generally tries to give testimony kind of
15 consistent with the government's narrative wherever she could.

16 And what's interesting about her -- well, there's a
17 couple thing that's interesting about her -- but one thing
18 that's interesting is none of that offended her enough to
19 leave. She didn't say she was on drugs -- on drugs, addicted,
20 had to stay at the job. She kept working there. None of it
21 bothered her enough that she left employment at Pharaoh's
22 until her boyfriend was fired. Then she told management I
23 don't play these games.

24 We don't know what the circumstances are around that,
25 but we know that's when she quits. Nothing in her tenure at

1 Pharaoh's was offensive to her enough to quit until they fired
2 her boyfriend, and then she's just somebody who just doesn't
3 play games.

4 And she comes back and goes there as a patron later
5 on. Which is something you hear about a lot of these
6 witnesses who talk about these horrific experiences, and then
7 they go back.

8 E.H. was another one who was posting on social media
9 about how she's going to send Mr. Gerace to jail, something to
10 that effect, on the morning of her testimony. Another person
11 who has a clear bias. It didn't come out exactly what her
12 bias is, but we know she has it. And you can consider that,
13 and you have -- that has to give you caution when you hear
14 testimony like that.

15 She was straight-up bizarre throughout most of her
16 testimony. The one thing that's particularly bizarre is when
17 confronted on cross-examination about her bias, when it was
18 brought up that she had been posting on social media about how
19 she's going to send him to jail, she got so combative she
20 started yelling about how she was raped.

21 And then it was clarified because I think all of us
22 were confused what she was referring to, and, oh, it's the
23 thing I talk about on direct examination, that there's the
24 allegation that somebody at some point ejaculated on me.
25 Something that I don't think the evidence to support it is

1 really believable at all when you consider the totality of her
2 testimony. But she's describing it as such a horrific
3 experience that Pharaoh's is certainly a place she would never
4 go back to, right?

5 She went back a few years later, and said she had one
6 of the best times of her life. Remember that weird testimony
7 where you asked about you got kicked out that night because
8 you were acting out of control? Well, yeah, I got kicked out.

9 And you had a bad time, you were pissed, right? Oh,
10 no, no, I actually had the best time of my life that night.

11 What? That's one of their witnesses. That's one of
12 the people that they referred to in their closing statement,
13 somebody that they said you should rely on.

14 The judge, I believe, will instruct you that
15 testimony from witnesses who were using or addicted to drugs
16 when the events that he or she observed took place must be
17 examined with greater scrutiny than the testimony of other
18 witnesses.

19 The government is completely right during their
20 closing, nobody's saying that because someone is addicted to
21 drugs, they can't -- that they can't be a victim of the crime
22 under certain circumstances. That's not what we have in this
23 trial. That's not what the -- what -- what the reality is.

24 But of course, of course somebody, just because
25 they're on drugs, can still be a victim of a crime. That's

02:12PM 1 not the issue.

02:12PM 2 The judge is not going to instruct you on anything
02:12PM 3 like that, and we're not going to argue that.

02:12PM 4 But I will argue consistent with what you'll be
02:12PM 5 instructed on is when somebody is heavily using drugs to the
02:12PM 6 extent that they say what most of these witnesses say they
02:13PM 7 were, where they had no awareness of what was going on half of
02:13PM 8 time, and then they come up and testify about specific
02:13PM 9 details. Especially when the details have changed over time
02:13PM 10 depending on when they meet with the government.

02:13PM 11 That's something you can consider. That's not off
02:13PM 12 limits. That's totally appropriate. And I believe you will
02:13PM 13 be instructed accordingly.

02:13PM 14 Witnesses who pleaded guilty after entering into an
02:13PM 15 agreement with the government to testify, you should bear in
02:13PM 16 mind a witness has entered into such an agreement has an
02:13PM 17 interest in this case different from other witnesses.

02:13PM 18 A witness who believes he or she may be able to
02:13PM 19 obtain his or her freedom, or receive a lighter sentence by
02:13PM 20 giving testimony favorable to the prosecution, has a motive to
02:13PM 21 testify falsely. That's common sense. It's so obvious. It's
02:13PM 22 so ingrained into the law that somebody who strikes a deal and
02:14PM 23 says I'm going to get a lighter sentence if I say this or
02:14PM 24 that, that it's instructed as one of the things you can
02:14PM 25 consider, that you should consider.

1 I mean, some of the nonsense that came from these
2 witnesses who are under agreements. The jailhouse informants?
3 Did any of you folks actually think either of them came across
4 as credible?

5 They write letters. A case that's in the news,
6 that's highly publicized, they both acknowledge, okay, yeah,
7 people in the jail were talking about Mr. Gerace and the case,
8 we watch the news every night, we check the paper, we check,
9 we are news junkies.

10 And why do you think they're news junkies? Because
11 opportunities like this present themselves.

12 I mean, the statements that were made were just so
13 perfectly tailored to what the government wanted or needed
14 from them.

15 And all the while, in order to believe the premise
16 that these statements were made, you have to believe
17 Mr. Gerace is just openly talking about criminal conduct.

18 And remember, you've got the cell phones. They want
19 you to believe that, what, there's no messages because he's so
20 careful? And then separately tell you this is somebody who
21 gets into a van in front of correctional officers, or at the
22 jail in front of other inmates and correctional officers, and
23 just starts announcing guilt in a way that's perfectly
24 tailored to what the government would want? Give me a break.

25 That's the type of people they put on the stand to

1 testify to you. That's the type of people they want you to
2 rely on. And that is reasonable doubt.

3 That's a reason to hesitate. If Ben Rivera or
4 Hughes -- Kevin Hughes said lend me \$500 and I'll give you 500
5 back next week, I imagine most of you are not taking that
6 deal. Most of you are not going to find that that person's
7 credible or reliable enough to do it.

8 And if any of you are, I imagine at a minimum you
9 would hesitate. And if any of you are so generous and
10 trusting that you wouldn't hesitate, I would hope that you
11 would find it reasonable if one of your fellow jurors did.

12 Now, we're talking about witnesses, so let's talk
13 about -- we've touched upon it a little bit, but let's talk
14 about really what precedes their testimony.

15 The witnesses that matter the most to the government,
16 you heard about excessive preparation.

17 We're not talking about meeting with them once to
18 kind of go through, here's the questions we're going to ask,
19 and, okay, now we now your answers. We're talking about
20 meeting with them again and again and again and again.
21 Communication consistently between agents and these witnesses,
22 testimony from grand jury proceedings.

23 And what matters about that? A few things. One,
24 you've heard throughout this trial that these witnesses were
25 generally aware that if they lie to a federal agent, they

1 could be charged. You heard about all these witnesses who
2 have changed their stories at various times lying to federal
3 agents, none of them are charged.

4 Some of them were put into the grand jury because
5 they were brought in at some point before charges were filed,
6 and you heard about that. And when these witnesses testified,
7 answers that were completely different in the way you
8 testified today. It wasn't always from the defense.

9 Sometimes the government liked an answer they gave earlier
10 better, they impeached their own witnesses. Well, you said
11 this on a different date. Because they actually liked the
12 earlier inconsistencies, so they went with that one instead.

13 These witnesses were prepped through and through, and
14 the government is supposed to -- well, I'm not going to say
15 what the government's supposed to do, but you would hope that
16 if somebody is lying to you, you would disregard them. You
17 would say this is somebody we can't rely on. This is not
18 somebody we are going to put in front of a jury and let them
19 give information that that jury could potentially rely on to
20 decide the fate of somebody.

21 With Lou Selva, there was some cross-examination and
22 redirect examination about the yelling. And it was asked on
23 redirect, well, sort of suggested we only yell at you when we
24 think you're lying about something.

25 Think about what that leads to. Think about how that

1 develops the testimony. You saw it happen on direct
2 examination. If a witness didn't say something they were
3 supposed to, you saw it on redirect quite a bit.

4 Some of the only times you saw an emotional reaction
5 out of a witness was when they're being yelled at by the
6 prosecutor in front of all you folks in an open courtroom, you
7 see an emotional reaction to that. It's nothing sincere about
8 that other than somebody isn't comfortable with being yelled
9 at. And that is in open court, not something that's happening
10 in the privacy of the U.S. Attorney's Office.

11 And probably one of the most significant things that
12 I think should be considered in terms of the direct
13 examination is you folks are the factfinders, you have to
14 critically evaluate the evidence, you have to do your best to
15 find the truth. And ultimately what you're making a
16 determination on is: Is there a reasonable doubt? Did the
17 government make -- did they reach their burden? Not what do
18 we think is more likely, not what do we think is possibly or
19 probably the case. You're trying to decide is there a reason
20 to hesitate here. Is there a reason, a -- a reason, would a
21 reasonable person doubt this evidence, a doubt that the
22 evidence supports one of the elements of the charge?

23 And on direct examination, far too often in this
24 case, you heard a narrative presented by a witness, that you
25 folks had no way of knowing was false, or knowing was just

part of the picture.

Those witness would get up say we're going to tell the truth, the whole truth, and nothing but the truth. And then it's during cross-examination that you find out, oh, there's a whole lot more to this than what the government gave us.

I'll give you two examples. K.L. There's no question, when you listen to the direct examination without more, that it would have made sense to feel some sort of emotional reaction and feel bad for her. Feel like this is, in fact, a victim that they're showing us. Because what they gave you was a story line where she goes up there and Mr. Gerace just pulls his pants off and uses drugs to coerce her into sex, and that's what they give you.

And that happens 10 or 15 more times. That's what you're left with. That's what they present you as the whole truth, all the truth.

And what comes out during the cross-examination? Nothing about that made sense. She was actually in a relationship with him. All the way from before Easter, all the way up until the end of her tenure at Pharaoh's.

She described it as a romantic relationship. She said the first night I was there, we were flirting, we went out to dinner, we did things that couples do.

Now, I'm not saying that it's not possible for some

of the other things alleged to have happened and also have been in a relationship, but it doesn't make sense here. There's definitely reasonable doubt. There's definitely reason to believe that if she gives you one version and leaves all that out and doesn't give you the context, there's a reason why they held it back. Because they didn't want you to know the context. Because when you know the context, you know nothing she's saying really does make sense here.

You found out when she was pulled over back in '09 in August, it's already at the end of the relationship. She's making allegations against Mr. Gerace, she's not trying to protect him. Never says anything about Lortabs. Never says anything about being coerced by him ever. None of that.

What she talks about is cocaine. She makes an allegation of cocaine, it's not corroborated by the search later on, but that's what she presents up. That's the allegation she was able to make at that time.

Special Agent Tom Callahan, who you did not hear about, met with her back then in '09 when they were in trouble, and that's what she offers up. She also offers up other information about other drug dealers that she can get drugs from, talking about how that night they were getting drugs from different locations, talking about other people at the club that she could potentially get drugs from. She specifically named one person at the club that you can get

Ecstasy and Lortabs from. Didn't say that she ever did or ever used Lortabs, but said there was a source for Lortabs in the club, and never mentions Mr. Gerace.

And when she gets in trouble again in 2012, again in a jail cell, Tom Callahan shows up to go talk to her. And still, nothing about Lortabs, nothing about anything coercive.

She's making allegations close to the time with no reason to protect Mr. Gerace, and it's nothing like the testimony that you heard on direct. Nothing at all.

When does she first come up with that? Last year. After she'd already testified at the grand jury, after she had met with agents and talked to them for years.

You got a brand new story that was just concocted last year, and it was the story that triggered all the payments that she started receiving, all the expenses: Hotel rooms, security deposits. They can frame that however they want.

Oh, she was scared. Suddenly, in 2013, she was scared and needed financial assistance. The timing of it is very problematic. It gives you reason to be suspicious. It gives you reason to hesitate as to her credibility.

Friday, they -- they start on direct, you don't want to be here, and she says no. Okay. Well, it's easy to say that and then get yourself another weekend of hotel rooms.

"They didn't ask" comment is a theme throughout this

1 trial. Katrina Nigro withheld some very specific information
2 on her direct examination that takes apart everything she
3 testified to. It was right in the beginning and almost
4 unexpected. I came back to it at the very end.

5 What did she tell you about her being in the club?
6 She said confidently, didn't even try to walk it back, never
7 realized what she had said. She told you confidently 2014.
8 2014, late 2014, I wasn't allowed in the club anymore. I
9 could only go in in the morning. Peter Gerace wouldn't let me
10 in the club.

11 I think she thought she was insinuating something
12 negative about Mr. Gerace, he wouldn't let her in the club, he
13 didn't want her to see what was going on.

14 Except the problem is that she's testified to you
15 about all these things that were going on in that timeframe
16 that she now revealed to you that she wasn't there.

17 On that summary chart, they have Katrina Nigro listed
18 at the top as evidence of the overdose in 2015. She said
19 there was two. It was one piece of evidence that she had
20 changed multiple times.

21 15 overdoses that she personally observed at some
22 point, then eight, then two, then two, then eight, then two.
23 Well, guess when they were? At a time where she just casually
24 admits she's not in the club anymore. Peter Gerace wouldn't
25 let her be there.

02:25PM 1 What did I ask at the very end? Did you ever tell
02:26PM 2 the government that? Oh, they didn't ask. Think about how
02:26PM 3 problematic that is.

02:26PM 4 Tell me that doesn't give you reasonable doubt.
02:26PM 5 Their star witness reveals that her testimony, some of the
02:26PM 6 most significant parts of her testimony are impossible. And
02:26PM 7 she says, well, the government didn't ask me about it.

02:26PM 8 What else did she say? What about the keys?
02:26PM 9 Remember the direct? I unlocked the door dozens of times. I
02:26PM 10 unlocked the door for celebrities, for Sabres, for
02:26PM 11 politicians, Peter Gerace would have me unlock the door.

02:26PM 12 Something that doesn't make really sense on its face, but
02:26PM 13 that's what she said. She told you that she is -- she would
02:26PM 14 bring dancers to the upstairs, and she would unlock the door.

02:26PM 15 On cross, when asked about it, she said oh, I got --
02:26PM 16 I didn't have a key.

02:26PM 17 Is there another key you had access to? No, I got
02:26PM 18 the key out of Chris Chudy's pocket one time, that was it.

02:26PM 19 Did you tell the government about that? They didn't
02:27PM 20 ask.

02:27PM 21 Now, payments to witnesses is something that should
02:27PM 22 give you real pause. Payments for security deposits, payments
02:27PM 23 for hotel rooms, payments for rent, payments for insurance on
02:27PM 24 the car. Special Agent Brian Burns made a comment about it
02:27PM 25 was evaluated as being worthwhile to secure their testimony.

02:27PM 1 To secure their testimony, that was language used.

02:27PM 2 It absolutely did secure their testimony. These were
02:27PM 3 witnesses that were bought and paid for. And you can and
02:27PM 4 should consider that in assessing the credibility of these
02:27PM 5 witnesses.

02:27PM 6 I submit you should consider any witness that had
02:28PM 7 criminal charges pending, even if the government told them
02:28PM 8 we're not going to -- to help you on your case.

02:28PM 9 People -- K.L. -- K.L. has charges she picked up
02:28PM 10 literally the day that she was supposed to testify in addition
02:28PM 11 to about three other sets of charges. She says, I'm on my own
02:28PM 12 for that.

02:28PM 13 Okay. You don't think that she thinks there's some
02:28PM 14 sort of benefit that she could potentially get here? Having
02:28PM 15 the government on your side?

02:28PM 16 Katrina Nigro, when she first reports this, doesn't
02:28PM 17 tell them about the pending DWIs, but it comes out. And she
02:28PM 18 says, well, I was always on my own. I never involved the
02:28PM 19 government in that. And the government may have never
02:28PM 20 intervened other than, like, a call to verify at some point
02:28PM 21 that she didn't have a particular device on her.

02:28PM 22 She acknowledged that in the text messages, she's
02:28PM 23 messaging Brian Burns telling him I just had my PSI and I'm
02:28PM 24 expecting to just get 10 days and some community service.
02:29PM 25 Does that mean the government provided a benefit? Maybe not.

02:29PM 1 But she's definitely trying to include them on how a vehicular
02:29PM 2 assault, which was about her 7th DWI, is resulting in ten days
02:29PM 3 in jail.

02:29PM 4 She reveals why they didn't -- they didn't know about
02:29PM 5 some of my other charges in other states, so I was basically
02:29PM 6 pulling one over on the Court.

02:29PM 7 P.H. not only had payments for rent, the payments
02:29PM 8 were given to her directly, and then she used the funds to buy
02:29PM 9 drugs. And then when they went to confront her on it, she
02:29PM 10 lied about it. She said, my husband blew it in gambling.

02:29PM 11 Those charges were still pending when she got up on
02:29PM 12 the stand. She knows those charges are pending. They're
02:29PM 13 prosecuted by this U.S. Attorney's Office. You don't think
02:29PM 14 that she's trying to make them happy with whatever she says on
02:29PM 15 the stand when they're still prosecuting her for misusing the
02:29PM 16 funds they gave her in relation to this case?

02:30PM 17 The benefits that L.L. received, paying for car
02:30PM 18 insurance, things that most of us have to take care of
02:30PM 19 ourselves, and all she had to do was give testimony that made
02:30PM 20 the government happy. And that testimony changed
02:30PM 21 significantly over time.

02:30PM 22 You heard testimony that she said originally, I
02:30PM 23 estimated 25 acts in the VIP Room. And then within a couple
02:30PM 24 weeks before trial she said oh, I miscalculated, it was
02:30PM 25 probably more like 500. What?

02:30PM 1 We're not talking about a difference between 25 and
02:30PM 2 35, or 25 and 50, or 25 and 75. We just came into a different
02:30PM 3 universe of estimates.

02:31PM 4 She was lying at some point. She's lying on the
02:31PM 5 stand, is the most likely the case, or she's lying before.
02:31PM 6 And if she's lied even once, and you're in a position where
02:31PM 7 you'd have to testify, you would have hesitate to rely on any
02:31PM 8 of her testimony. She is not a reliable witness. She's not
02:31PM 9 somebody you can count on as part of rendering a verdict here.

02:31PM 10 **MR. FOTI:** Okay. Just give me a moment.

02:31PM 11 Judge, can we take a short break?

02:31PM 12 **THE COURT:** Sure, absolutely.

02:31PM 13 So, folks, let's take a ten-minute break. Remember
02:32PM 14 my instructions about not talking about the case with anyone
02:32PM 15 including each other, not making up your mind.

02:32PM 16 See you back here in about ten minutes.

02:32PM 17 (Jury excused at 2:32 p.m.)

02:32PM 18 **THE COURT:** Anything for the record from the
02:32PM 19 government?

02:32PM 20 **MR. COOPER:** No, thank you.

02:32PM 21 **THE COURT:** From the defense?

02:32PM 22 **MR. FOTI:** No, thank you, Judge.

02:32PM 23 **THE COURT:** Okay. Are you still on target, Mr. Foti,
02:32PM 24 for --

02:32PM 25 **MR. FOTI:** I believe so. I believe there's probably

about an hour left, maybe a little less.

THE COURT: Okay. Great. Thanks, everybody.

THE CLERK: All rise.

(Off the record at 2:33 p.m.)

(Back on the record at 2:42 p.m.)

(Jury not present.)

THE CLERK: All rise.

THE COURT: Please be seated.

THE CLERK: We are back on the record for the continuation of the jury trial in case numbers 19-cr-227 and 23-cr-37, United States of America versus Peter Gerace Jr.

All counsel and parties are present.

THE COURT: Okay. Are we ready to continue, Mr. Foti?

MR. FOTI: Yes, Judge, thank you.

THE COURT: Government -- government ready?

MR. COOPER: Yes, Judge, thank you.

THE COURT: Okay. Let's bring them back, please, Pat.

MR. SOEHNLEIN: Your Honor, do you -- do you have the exact amount of time that we have left up there?

THE COURT: I've got two hours and 21 minutes left.

MR. SOEHNLEIN: Thank you, Judge.

MR. FOTI: I promise not to go over that.

MR. SOEHNLEIN: I'm gonna help him even though he

02:45PM 1 called me a nerd.

02:45PM 2 (Jury seated at 2:45 p.m.)

02:45PM 3 **THE COURT:** The record will reflect that all our
02:45PM 4 jurors, again, are present.

02:45PM 5 Mr. Foti, you may continue.

02:45PM 6 **MR. FOTI:** Thank you, Judge.

02:45PM 7 Okay. So, I want to start talking about the charges.

02:45PM 8 During Mr. Tripi's opening statement and then on the
02:46PM 9 closing arguments by Mr. Cooper, to help kind of work through
02:46PM 10 them, they've kind of broken it into to four different
02:46PM 11 categories of charges, and when the judge instructs you he's
02:46PM 12 not going to place it into four different categories, and he's
02:46PM 13 not going to necessarily frame it that way.

02:46PM 14 For purposes of discussion, I think that that works.
02:46PM 15 So we're going to do that. We're going to talk about it in
02:46PM 16 sort of the same general categories that the government
02:46PM 17 discussed it as a means of kind of working through them.

02:46PM 18 I'm not -- I don't intend to go in the same order
02:46PM 19 that the government did, I'm going to go in the order of the
02:46PM 20 actual -- or, I might jump around a bit, but I'm going to
02:46PM 21 start at the beginning of the indictment, so I'm going to
02:46PM 22 start with the Bongiovanni-related charges, okay?

02:46PM 23 There were a couple of points made during the closing
02:46PM 24 about things that Mr. Bongiovanni did, and while if he did
02:47PM 25 that, that would be a violation of DEA policy, and if he did

that, that would potentially be a crime.

And as the very outset of this I want to say Mr. Bongiovanni's not on trial here. If he did something that was a violation of DEA policy, that doesn't mean you convict Peter Gerace.

If he did something that constituted a crime unrelated to Peter Gerace, that doesn't mean you convict Peter Gerace.

If he did something that theoretically was a crime that related to Peter Gerace, you still don't convict Peter Gerace, unless you believe the evidence established that Peter was in an agreement with Bongiovanni for it. That it wasn't just a friend who did something looking out for somebody, it was actually part of an agreement to act unlawfully.

So all of that matters because the closing arguments about Mr. Bongiovanni were closing arguments that were really about how Mr. Bongiovanni's guilty of this or that with no real evidence that Peter Gerace was trying to procure any type of benefit other than the allegations that Katrina Nigro made of these envelopes, which it's just not credible at all.

So we'll come back to that in a little bit. But I want to start there and then we'll talk through each of these, these events.

What I'm saying is by no way some sort of position or belief that I think Mr. Bongiovanni's guilty of something. If

02:48PM 1 he ever has been found guilty of anything, or he's ever been
02:48PM 2 found to have violated DEA policy, that's not part of this
02:48PM 3 trial.

02:48PM 4 What's part of this trial is whether there was an
02:48PM 5 unlawful agreement between Mr. Gerace and Mr. Bongiovanni that
02:48PM 6 constituted a conspiracy, and whether the proof supports that
02:48PM 7 beyond a reasonable doubt as to each element, and whether
02:48PM 8 there was the payment of a bribe and whether the proof
02:48PM 9 supports that beyond a reasonable doubt as to each element.

02:48PM 10 Now, the government presented evidence that
02:49PM 11 Mr. Bongiovanni and Peter Gerace were friends. They go back
02:49PM 12 to childhood. Nobody's disputing that. Friendship is not
02:49PM 13 criminal.

02:49PM 14 Somebody becoming friends with somebody else who is
02:49PM 15 in law enforcement does not establish a conspiracy.

02:49PM 16 Somebody talking to their friend, even after they
02:49PM 17 join the DEA, and communicating with them openly on a
02:49PM 18 DEA-issued phone, does not establish a conspiracy if there is
02:49PM 19 not discussion of entering into some sort of agreement or at
02:49PM 20 least an implication of them entering into an agreement to do
02:49PM 21 something unlawful.

02:49PM 22 And to that point, Mr. Bongiovanni communicated with
02:49PM 23 Peter Gerace on his DEA-issued phone which was property of the
02:50PM 24 DEA. That was not the type of thing that they needed to get
02:50PM 25 some sort of special authorization to get access to. You

1 heard testimony, that phone belongs to DEA. They -- the DEA
2 or investigators in conjunction with administration of DEA
3 could have scooped up that phone at any time.

4 This investigation started before Mr. Bongiovanni
5 went into administrative retirement in February of 2020, and
6 there's no effort to retrieve his phone. They meet with him,
7 have interviews with him, they never ask to look at his phone
8 or see his phone. They end up having records, some from
9 Peter's phone and then there's records from the phone
10 companies establishing that there was communication. The
11 communication was between Peter Gerace and Mr. Bongiovanni on
12 his phone.

13 And there's no discussion of bribery, or can you do
14 this, can you -- can you look out for me, can you intervene?
15 I think I might be in trouble, can you find out if I'm being
16 investigated for something?

17 The most they have is that recording where Peter very
18 casually says something like, hey, I'm wondering if a drug
19 dealer -- and I'm going to misphrase it but something along
20 the lines, wonder if a drug dealer, if they can track these --
21 if they can -- these TracFones, these TracFones. The way --
22 the wording of it suggests he's asking a question, and there
23 is some context to it that we're missing. He's not saying
24 anything to suggest he's the drug dealer, or to suggest that
25 he's even asking about a particular drug dealer.

1 The reality is, and this is common sense, something
2 like that is not the secret details of an investigation. He's
3 not asking for the secret details of an investigation, he's
4 asking about what's been referred to as law enforcement
5 techniques. We all can imagine that that type of question
6 probably could have been answered by Googling, but he called
7 his DEA friend.

8 The idea that he did it because the DEA agent is on
9 retainer is just silly. He did it to the DEA-issued phone.

10 If you think that that call related to some sort of
11 criminal effort on Mr. Gerace's behalf, why is that the worst
12 thing that could you find? That would suggest that he's so
13 sloppy he's calling and asking -- leaving voicemails, recorded
14 voicemails, asking about criminal effort, and nowhere else in
15 the text messages, nowhere else is there any evidence of that
16 whatsoever? That was -- there's no context of that.

17 Suggesting that it's anything other than innocuous is
18 asking you to speculate. It's not a reasonable inference.
19 It's one inference, but it is one of many inferences that can
20 be drawn as to what was going on. We have no context at all.

21 They're communicating on Mr. Bongiovanni's DEA-issued
22 phone. The suggestion and insinuation Mr. Bongiovanni was
23 trying to hide his relationship from Mr. Gerace is just
24 nonsense.

25 Not only was he talking on his DEA-issued phone, he,

02:53PM 1 when -- when Peter Gerace was at that -- that reunion where he
02:53PM 2 runs into Casullo, he's not in a criminal conspiracy with
02:53PM 3 Bongiovanni. If he were, you wouldn't tell the DEA agent
02:53PM 4 who -- that you just ran into, hey, this other DEA agent's
02:53PM 5 across the street, let's go, go see him.

02:53PM 6 That's consistent with a friendship. That's not
02:53PM 7 consistent with somebody who is -- who is protecting a
02:53PM 8 conspiracy. It didn't make any sense.

02:53PM 9 I want to go through the events that were discussed
02:53PM 10 in a little bit more detail, and I asked that the government
02:53PM 11 put up Exhibit 555, their -- their -- their summary exhibit,
02:53PM 12 because in this exhibit, they went through and essentially
02:53PM 13 identified the different actions that are referred to in the
02:54PM 14 overt acts and that they talked about on their closing
02:54PM 15 argument so, we're going to kinda use this as a guide post.
02:54PM 16 We'll go through it.

02:54PM 17 I'm going to make a number of points as we go
02:54PM 18 through. And, again, just to go back to where we were in the
02:54PM 19 beginning, what I say does not limit your ability to
02:54PM 20 critically think about these things, it's not to -- this
02:54PM 21 doesn't prevent you from coming up with other points of
02:54PM 22 argument or other things about what they gave you that doesn't
02:54PM 23 make sense. This is just some observations that I'm going to
02:54PM 24 make. Okay?

02:54PM 25 First, go all the way back to the very beginning, the

1 2005 Craig Border DEA search. This is a conversation that the
2 evidence of this relates to R.A. telling you about a
3 conversation that Peter Gerace said that he had with
4 Bongiovanni, and she's recalling details of a conversation
5 that occurred nearly two decades ago.

6 It is so far back that I think we can all expect it
7 would be impossible to remember the nuance of what was said
8 during that conversation or what other circumstances
9 surrounded it. But even if you are to accept as a general
10 premise, despite two decades of time having passed and despite
11 nothing else from any of the people who were at that search
12 warrant execution, any testimony about what happened there or
13 whether Mr. Bongiovanni had contact with anything, despite
14 not -- none of that being presented to you, if you accept as a
15 general premises -- a general premise that -- that
16 Mr. Bongiovanni ends up sharing something that he shouldn't
17 have with his friend Peter Gerace, that does not establish a
18 conspiracy. That is a shortcut. The government is trying to
19 bypass an essential component of this.

20 That is exactly what I was talking about. If
21 Mr. Bongiovanni did something that he wasn't supposed to do as
22 a DEA agent, you don't just suddenly assume there's a
23 conspiracy between these two. You don't know what the context
24 of that conversation was, or to the extent that Peter Gerace
25 was entering into an agreement because some information was

1 shared with him.

2 Mr. Bongiovanni might have done something wrong. He
3 might have been -- maybe it's something that he should have
4 been reprimanded for the same way Special Agent Casullo was
5 reprimanded over something that happened in Las Vegas
6 involving one of Peter Gerace's best friends.

7 But that's what we're talking about. We're not
8 talking about a conspiracy.

9 And I want to go forward. And as we go forward, we
10 get to the 2000 -- or, I'm sorry, we go forward, we get to the
11 2008 Bongiovanni cold approach. And I want to focus on this
12 one because it's one of the most ridiculous examples of a
13 conspiracy to defraud the United States.

14 On here, they list who the relevant witnesses are.
15 The relevant witness for this particular account is Chris
16 Wisniewski.

17 Chris Wisniewski testified there was an
18 investigation. Bongiovanni said why don't I -- I know this
19 guy. He doesn't hide the fact that he knows him, he's
20 upfront. I know him back in the neighborhood.

21 He doesn't recall 15 years ago Bongiovanni sharing
22 details of when they went out to dinner and things like that.
23 It's like 15 years ago. Who knows what was actually shared?

24 What he remembers is he at least acknowledges, this
25 is somebody I've known for a long time. Why don't I try a

code approach?

No visitation on that that comes through in the evidence. No -- no one that can reveal that he's a target.

The testimony pretty much suggested Peter Geraci or Peter Gerace was not a very serious target of this investigation. There was the idea that, sure, give it a shot, maybe you can get some information.

That was the way Agent Wisniewski testimony's came across. And the whole premise behind this idea that something inappropriate happened here is that -- and it just came up in closing, this argument that's being presented to you that this cold approach is a way of tripping off Mr. Gerace.

Now when we talked to this witness on cross-examination, we talked about how people are tipped off about investigations through a number of investigative techniques, search warrants, being pulled over sometimes or pulled into a room when you're interviewed.

Just because a cold approach is one type of investigative technique that reveals that there's a potential involvement in an investigation doesn't mean that's the only way somebody could -- could learn of it. But there, one of the most interesting -- target letter search warrants aside, one of, I think, the most interesting aspects of -- of how somebody could be tipped off was -- was in this question. Well, first, the question was asked --

1 And by the way, you'll be told by the judge you can
2 ask for read backs of testimony. Sometimes that helps. So,
3 this was a long trial, and there are certain times where
4 you're gonna say, okay, I remember something being said on
5 direct, what happened on cross with that witness? Or, what
6 was the inconsistency between these two individuals. You'll
7 be able to ask for read backs.

8 I'm going to just refer to a couple of pieces of
9 testimony as we go forward here.

10 Special Agent Wisniewski was asked: Just to be
11 clear, search warrants and target letters, they're just two
12 specific examples of how somebody could be alerted to the
13 target of the investigation? He says yes.

14 And then this is the part that I think is most
15 interesting, and just absolutely decimates this allegation
16 that it was all done to tip Peter Gerace off. And it's so
17 straightforward.

18 Question: If Mr. Bongiovanni was trying to alert a
19 target to an investigation, is the cold approach the only way
20 to do that?

21 No.

22 Question: In fact, he can just go tell the person
23 that they're being investigated, couldn't he?

24 Correct.

25 Follow-up question: He wouldn't have to go through

03:00PM 1 this effort of involving the DEA and his supervisors, and
03:00PM 2 other people going through official mechanisms to see if
03:00PM 3 information is available, correct?

03:00PM 4 Correct.

03:00PM 5 Think about that. The government's whole premise
03:00PM 6 falls apart. He did a cold approach to tip him off? Why
03:00PM 7 would you alert your supervisors? Why would you involve the
03:00PM 8 DEA, make official paperwork, to tell somebody that they're
03:00PM 9 being investigated, if you actually have some corrupt intent?
03:00PM 10 Why wouldn't you just go tell them? There's no documentation
03:00PM 11 of it.

03:00PM 12 Nobody would even necessarily know that you saw the
03:00PM 13 chart. There'd be no documents the government's pulling up
03:00PM 14 15 years later, misinterpreting, trying to sway a jury away
03:00PM 15 from the truth and towards a narrative.

03:00PM 16 If Mr. Bongiovanni was corrupt the way the government
03:01PM 17 has alleged, it doesn't prove that Mr. Gerace is guilty of
03:01PM 18 anything.

03:01PM 19 But separating us from that for a moment, they didn't
03:01PM 20 prove Mr. Bongiovanni was corrupt. They certainly didn't with
03:01PM 21 this example. And if this example gives you reasonable doubt,
03:01PM 22 you should consider that in assessing all of these examples.

03:01PM 23 This is what I said at the beginning of the closing
03:01PM 24 argument. Your job doesn't end when the government tells you
03:01PM 25 how to think. Some of you folks have probably already thought

1 about that. I don't think I'm probably the first one to
2 say -- well, I -- well, the witness was cross-examined on it,
3 so I'm sure some of you did think about it at least.

4 Some of you may have thought about it even if I
5 didn't ask him, which is part of the critical thinking
6 process. Great. Well, being told that he went through this
7 process of documenting all of this and involving his
8 supervisors and potentially bringing his partner with him?
9 Because there was testimony that Joseph Palmieri was his
10 partner who may have went with him, Chris Wisniewski didn't
11 know whether he did or not. All of that to tip him off,
12 instead of just tipping him off? Doesn't make any sense.

13 Well, then he derails the investigation. Then the
14 response is, well, there's more to it than that. Yes, we
15 argue that it was all to tip him off, but we also argued that
16 he came back and said there's no information and that ended
17 it.

18 That's not the case. Wisniewski never testified to
19 that. Wisniewski never said I abandoned any interest in
20 Mr. Gerace because of the fact that Mr. Bongiovanni said he
21 didn't have any relevant information.

22 Is that how you think investigations are done? We go
23 ask potential targets do you have information, they say no,
24 and we say okay, good enough? That makes no sense at all.

25 This 2005 or 2008 incident, the way they told you to

1 think about it, is completely contrary to basic logic and
2 common sense.

3 And I understand that at various points in this case
4 there was very much a kitchen-sink approach of we'll just
5 allege different theories and maybe something will stick. But
6 that's now how this works.

7 If there was any reasonable doubt, if you hesitate as
8 to any element, you have to acquit. And if they've presented
9 you an argument that should make you wonder about what was
10 presented to you throughout the other arguments, that
11 definitely gives you a reason to hesitate. That definitely is
12 reasonable doubt.

13 2009, U.S. Probation search. Mr. Bongiovanni
14 intervenes on Mr. Gerace's behalf and does absolutely nothing.
15 What did the probation officer say on direct? Didn't impact
16 anything I had to do, that Mr. Bongiovanni reached out.

17 Well, it was his intent.

18 Look, here is how that whole incident played out if
19 you think about the evidence. Mr. Bongiovanni knows Peter
20 Gerace. Again, doesn't hide the relationship, says I know
21 him, he goes way back, he's a good guy. Tries to set up a
22 meeting with the FBI knowing there is somebody investigating
23 the case.

24 They have a conversation where Special Agent
25 Bongiovanni introduces Special Agent Herbst to Mr. Gerace,

03:04PM 1 makes the connection. If he really wanted to give
03:04PM 2 Mr. Herbst -- Special Agent Herbst the impression that he's --
03:04PM 3 that he's a confidential source, he didn't need to set up that
03:04PM 4 meeting. He could have just called and said oh, I've been
03:04PM 5 working with Mr. Gerace for a long time.

03:04PM 6 He set up a meeting giving Mr. Herbst an opportunity
03:04PM 7 to meet with Mr. Gerace.

03:04PM 8 And you heard from Mr. Lepiane that there was a phone
03:04PM 9 call after where Mr. Herbst reported back at that time, oh, he
03:04PM 10 doesn't really have any relevant information right now, but
03:04PM 11 I'll continue to work with him. That is totally different
03:04PM 12 than that testimony you got. The testimony that
03:05PM 13 Mr. Bongiovanni derailed the investigation. That is nonsense.
03:05PM 14 That is not at all what happened back then.

03:05PM 15 Mr. Gerace did not get a single benefit from
03:05PM 16 Mr. Bongiovanni getting involved. And what did
03:05PM 17 Mr. Bongiovanni do? He connected Mr. Gerace with Mr. Herbst.
03:05PM 18 Nothing came out of it.

03:05PM 19 This whole idea that Mr. Bongiovanni derailed the
03:05PM 20 investigation back in 2009 is also ridiculous for another
03:05PM 21 reason. The U.S. Attorney's Office had already been involved
03:05PM 22 in conversations with Mr. Herbst. Mr. Herbst said I have a
03:05PM 23 prosecutor ready to go. And the way the government's arguing
03:05PM 24 it to you would suggest that, well, because of this one
03:05PM 25 conversation, the agency that decides to prosecute somebody

03:05PM 1 apparently just never asks about him again. That makes no
03:05PM 2 sense either.

03:05PM 3 There is holes all over the place in these scenarios
03:05PM 4 that they presented you with.

03:05PM 5 The U.S. Attorney's Office did not prosecute
03:05PM 6 Mr. Gerace after supposedly saying that they might be
03:05PM 7 interested in the case, if you believe the testimony. And
03:06PM 8 they drop it because, what? Herbst goes to the U.S.
03:06PM 9 Attorney's Office and says I think that -- I think that
03:06PM 10 Mr. Gerace might be a confidential informant for the DEA?
03:06PM 11 That's the end of the prosecution? The U.S. Attorney's Office
03:06PM 12 never follows up on that?

03:06PM 13 Are we being serious here? This is what they tell
03:06PM 14 you to accept? This is how they tell you to think? It
03:06PM 15 doesn't take much for this all to fall apart.

03:06PM 16 2015 overdose. They have Katrina Nigro listed up
03:06PM 17 here. Katrina Nigro is not there in the evenings in 2015, she
03:06PM 18 testified to that. When asked about it, she says they didn't
03:06PM 19 ask me. I just never told them that.

03:06PM 20 Katrina Nigro is not a witness to an overdose. She
03:07PM 21 does not prove up an incident that apparently happened in
03:07PM 22 2015.

03:07PM 23 Well, there are two other individuals listed here,
03:07PM 24 Doug Augustyniak and Anthony Casullo. Doug Augustyniak,
03:07PM 25 somebody the government says you shouldn't believe any of his

03:07PM 1 testimony other than the part that we locked him in on in the
03:07PM 2 grand jury. Doug Augustyniak never gave you any testimony
03:07PM 3 suggest that he's friends with Mr. Gerace. He left Pharaoh's
03:07PM 4 back in 2018.

03:07PM 5 He said, I'm friends with Brian Rosenthal. He did
03:07PM 6 not say anything similar about Mr. Gerace. He did say he has
03:07PM 7 a problem with his prosecution. Okay.

03:07PM 8 Adding that he friends with Mr. Gerace, or during the
03:07PM 9 cross or redirect or whatever, saying well, you liked your job
03:07PM 10 at Pharaoh's, that's fine, he was not working there anymore.
03:07PM 11 He has no loyalty indicated to Mr. Gerace. By the time he
03:07PM 12 went into the grand jury he didn't have any loyalty to
03:08PM 13 Mr. Gerace, and that's when they said they locked him into
03:08PM 14 this testimony that this happened in 2015.

03:08PM 15 And they tell you you know that Agent Casullo's story
03:08PM 16 is true because it matches up with Doug Augustyniak. Now
03:08PM 17 think about this one. What did -- what did Doug Augustyniak
03:08PM 18 say? He said he calls Peter Gerace, Peter Gerace says get her
03:08PM 19 out of there.

03:08PM 20 How in the world does that match up with what Agent
03:08PM 21 Casullo claims that Mr. Bongiovanni said? Because there was
03:08PM 22 an overdose that Mr. Bongiovanni, according to Agent Casullo,
03:08PM 23 years later he gave advice on, who knows what Agent Casullo
03:08PM 24 had heard in the meantime.

03:08PM 25 If you were to believe Agent Casullo's account of

03:08PM 1 what Mr. Bongiovanni said, and then go further to believe what
03:08PM 2 Mr. Bongiovanni had said was true during the course of that
03:08PM 3 conversation, then Doug Augustyniak's testimony would have
03:09PM 4 been Peter Gerace -- I called Peter Gerace, got ahold of him,
03:09PM 5 he said hold on a second, I'm gonna need about five, ten
03:09PM 6 minutes to figure out what to do here, hung up, call him back
03:09PM 7 sometime later. Okay. Get the body out of there.

03:09PM 8 That's not the testimony. The testimony is, right or
03:09PM 9 wrong, if you believe Doug Augustyniak, Peter Gerace reacted
03:09PM 10 saying get her out of there. Take her somewhere.

03:09PM 11 And that is something that, if it's true, we may all
03:09PM 12 think that that was one of poorest decisions Peter Gerace
03:09PM 13 could have made, and that has nothing to do with the charges
03:09PM 14 before you. It may be a sin, but as Mr. Soehnlein said in the
03:09PM 15 opening, not every sin is a crime.

03:09PM 16 What we do know is that if you believe that testimony
03:09PM 17 from Doug Augustyniak, a witness the government said you
03:09PM 18 should disregard in every other respect, their own witness, it
03:10PM 19 makes no sense to say you should just pick out the part we --
03:10PM 20 we want you to listen to. But if you believe his testimony,
03:10PM 21 that couldn't have happened with Bongiovanni. It doesn't
03:10PM 22 match up.

03:10PM 23 What makes more sense is the rumors and the
03:10PM 24 information that at some point could have gotten to Special
03:10PM 25 Agent Casullo informs on how he describes a conversation later

on. All he had to hear was a rumor that there was an overdose at some point, and he can make the allegation well, Mr. Bongiovanni said that -- that he helped Peter Gerace with an overdose.

The government says it matches up to Doug Augustyniak's testimony, and it just doesn't. There's nothing to support that. And just on closing arguments, that's how you know it's true, so I guess we don't.

I guess with a little bit of thought, we don't just accept what the government tells you. It just doesn't actually match up.

And, again, that's reasonable doubt. Not just as to this overt act, but as to all of them.

Special Agent Casullo's investigation of Gerace. There was clearly so much more about Special Agent Casullo and his relationship with Mr. Gerace than what he testified to on direct.

And what was particularly interesting, even though he didn't -- he indicated he didn't recall it at first, but then was asked about some emails that he had sent, and he acknowledges he was having conversations with Special Agent Herbst in 2010 about Peter Gerace and Joe Bongiovanni. No real testimony from Special Agent Herbst about that, no testimony from Special Agent Casullo about it or, oh, yeah, we -- we might have talked about that or it might have

1 happened at some point. There was way more going on behind
2 the scenes than what you were given as jurors.

3 Special Agent Casullo definitely had an interest in
4 Mr. Gerace and Mr. Bongiovanni going back years before he
5 claims that he got interested in Pharaoh's because the class
6 clown said he's gonna go to Pharaoh's and do a line of coke
7 off a stripper's ass.

8 Did anybody believe Special Agent Casullo when I
9 said he was joking when he said that to you, and he said, oh,
10 I took it very seriously.

11 Come on. He -- he says, I just developed an
12 investigation that day. I heard things during this reunion
13 that made me think Peter Gerace might -- might be somebody
14 that I want to investigate. Somebody that --

15 I was talking to, Special Agent Herbst back in 2010,
16 but I'm not going to reveal that to the jury unless confronted
17 with an email I sent.

18 -- somebody that I have some issues going back to
19 Vegas with one of Peter Gerace's best friends that resulted in
20 some sort of reprimand.

21 Don't tell me there's not more going on behind the
22 scenes with Special Agent Casullo. We did not hear the full
23 story.

24 And this whole thing about this confrontation with
25 Mr. Bongiovanni on its face doesn't make sense.

1 That Mr. Bongiovanni would be worried that there's
2 calls between him and Mr. Gerace doesn't make sense. They're
3 on his DEA-issued phone. That's what we're talking about.

4 And if he's concerned about the calls, all he has to
5 do is go say, hey, I'm worried about the calls, let me explain
6 the context. We're friends going back. That's not a surprise
7 to you. You saw -- you saw us -- you saw us out at Tappo
8 together, you came and joined us. That's all he has to say.

9 The idea that he would say, I'm worried that you're
10 going to check the call logs and find out about a call I made
11 involving an overdose, how does that make sense? How does it
12 make sense that Mr. Bongiovanni concerned about these call
13 logs being received, which include his DEA-issued phone, would
14 go into a meeting and say, let me tell you about a call that
15 would potentially incriminate me in some way.

16 What? That's their case? That's the public
17 corruption? That is so twisted. It is not at all based on
18 logic. It is not based on common sense, and at a minimum, you
19 should hesitate to accept what they're giving you here.

20 We already talked about the voicemail. All these
21 messages and that's -- you heard the tone of the voice.
22 There's no -- nobody's nervous on that. Nobody's referencing
23 a particular incident.

24 Was it a stupid voicemail to leave? Yeah, if you
25 knew you were gonna ultimately end up in a courtroom being

1 accused of entering into a conspiracy with your friend, then
2 yeah. I'm sure that whatever he wanted to know, he could have
3 looked it up on Google instead.

4 But the idea that that is an overt act, that that's
5 proof of a conspiracy, especially when you consider all of the
6 holes and the logic associated with all these other incidents,
7 that that's it? It's just not. It's not it.

8 And as far as those 2019 memos, I don't know, fine.
9 I think Mr. Bongiovanni knew he was being investigated and
10 tried to say some things to minimize his relationship with
11 Peter Gerace. Okay. It doesn't mean Peter Gerace was part of
12 a conspiracy. It just doesn't.

13 He knew people were trying to make a case against
14 him, that people were gonna twist every interaction he ever
15 had with Peter Gerace. So he may have made reports that --
16 I'm just not even gonna comment on. I'm not saying that
17 they're false or anything, I don't have a position on it. It
18 doesn't matter. It doesn't prove a conspiracy against
19 Mr. Gerace.

20 They did not prove Count 1. They did not. There is
21 reasonable doubt all across those elements. There is reasons
22 to hesitate across those elements. And if you want to just
23 accept what the government's giving you, if you think anybody
24 else is reasonable to hesitate, then you know reasonable doubt
25 exists, and you have to acquit. That's the instruction.

03:16PM 1 You folks, I'm sure, can look at the arguments that
03:16PM 2 have been presented to you and see so many more problems than
03:16PM 3 what I've just presented to you. You are capable of seeing
03:16PM 4 all of the flaws in what was given to you, it doesn't have to
03:16PM 5 come from my mouth.

03:16PM 6 I imagine and believe that each of you individually
03:16PM 7 and collectively can come up with points well beyond what I
03:16PM 8 just said, I truly do believe that.

03:16PM 9 The only verdict that is supported in Count 1 is a
03:16PM 10 verdict of not guilty.

03:16PM 11 And by extension, Count 2, it basically flows off of
03:16PM 12 that. But the idea would be also -- presumably have to
03:16PM 13 believe Katrina -- Katrina Nigro about these envelopes,
03:16PM 14 something that she's changed over time, how many envelopes
03:17PM 15 there are, that there's been different testimony about it.
03:17PM 16 The idea that on closing they said, oh, she was in his inner
03:17PM 17 circle, she could be trusted.

03:17PM 18 She told you that in 2014, she wasn't even allowed to
03:17PM 19 be at the club. Do you think that Peter Gerace is in a
03:17PM 20 conspiracy and he's giving bribes to -- to Joseph Bongiovanni
03:17PM 21 and having to go through Katrina Nigro? Somebody who had a
03:17PM 22 reputation for dishonesty? Somebody that it only took a
03:17PM 23 couple more years before the relationship came apart and she
03:17PM 24 was trying put false charges on him, and leaving him
03:17PM 25 voicemails saying I'm going to destroy your life? Do you

1 think that she's the one in the inner circle that he was gonna
2 have deliver envelopes?

3 Do you think there's a reason why the number has
4 changed so many times? She forgets what she says in the past.
5 The numbers change when she talks to law enforcement on
6 different occasions or she testifies because the details are
7 bogus.

8 Count 2 is not guilty. There's reasonable doubt all
9 over the place. Katrina Nigro is not a person that any of us
10 should reasonably think we could rely on. Every single one of
11 us should feel like we would have to at least hesitate to rely
12 on her on a determination of this importance.

13 Okay. Count -- Counts 3 and 4 is the drug
14 conspiracy. I want to make a couple of points here. First of
15 all, I want to be candid with you. There is obviously more
16 evidence of drugs than some of the other areas that we're
17 talking about. Okay? That doesn't mean that when you hear
18 what the charges are here, that the verdict is guilty.

19 You're not -- they're not -- this is not
20 oversimplified in a way of were there drugs at Pharaoh's?
21 Well, then, convict.

22 I want to talk about both of those charges that
23 relate to the drugs. First, maintaining a drug-involved
24 premises.

25 Now, a significant respect that drugs are part of it,

1 the government has oversold the case when they say it's part
2 of the business model. That's just not the case.

3 You heard a lot of testimony about people being fired
4 when they actually got caught with drugs. Those who were
5 using drugs tried to hide it.

6 Some of the witnesses -- some of the government's own
7 witnesses were fired at some point for drugs, had to go back
8 to rehab -- had to go to rehab, and could only come back after
9 that. So the idea that it's built into the business model is
10 just not realistic, but to start as a starting point, on the
11 maintaining drug premises -- on maintaining a drug premises
12 charge, the judge is going to read the charge and the
13 instruction, and I believe what you're going to hear is that
14 the charge alleged is maintaining a drug-involved premises
15 from 2006 to 2009. Beginning in 2006, ending -- I'm sorry, in
16 2019. Ending in 2019. I -- this is easy to confuse.

17 The allegation isn't you just have to find beyond a
18 reasonable doubt that at some point in that timeframe or for
19 some periods of that timeframe or even for the majority of the
20 timeframe, he was maintaining a drug premises. You have to
21 find that he was maintaining the drug premises for the
22 duration. That's the charge.

23 The government charged it that way. They said --

24 **MR. TRIPI:** Objection, misstatement.

25 **THE COURT:** Overruled.

03:20PM 1 **MR. FOTI:** -- they said Peter Gerace was engaged in
03:20PM 2 maintaining a drug premises beginning in 2006 up to 2019. And
03:20PM 3 what did we hear from the witnesses? Peter Gerace was totally
03:21PM 4 out of the club for a whole year or more.

03:21PM 5 I know some of you may say, well, that sounds like
03:21PM 6 some sort of technicality. It's not. That's the charge
03:21PM 7 you're presented with. Beginning in 2006 all the way up to
03:21PM 8 2019. If you have reasonable doubt whether he maintained the
03:21PM 9 drug premises for the duration, you are to acquit.

03:21PM 10 The government could've charged this starting in
03:21PM 11 2014, that's not the charge before you. The charge is going
03:21PM 12 all the way back to 2006. And what did you hear in terms of
03:21PM 13 testimony?

03:21PM 14 Well, Katrina Nigro, on something that she would have
03:21PM 15 not realized it would ultimately have any relevance to the
03:21PM 16 decisions you have to make acknowledges that he was out. He
03:21PM 17 was out for -- for probably from 2012 to early 2014. You know
03:22PM 18 that's the case because it's not just her testimony on that,
03:22PM 19 there's pictures of the grand reopening party that you heard
03:22PM 20 everybody testify about. And that grand reopening party was
03:22PM 21 anchored to the end of the dispute between the two owners.

03:22PM 22 Don Parrino was an owner back in -- going back to the
03:22PM 23 beginning, all the way up till 2014. And during the dispute
03:22PM 24 in ownership, you heard multiple witnesses get up here and say
03:22PM 25 things that there was a period of time where Peter Gerace was

03:22PM 1 out of the club.

03:22PM 2 You not only heard that from witnesses, you saw
03:22PM 3 evidence of it in the government's summary charts. There was
03:22PM 4 an exhibit that showed the phone calls between Mr. Gerace and
03:22PM 5 Pharaoh's. And if you looked at the chart, without looking at
03:22PM 6 the individual lines underneath, you would think, oh, look,
03:22PM 7 he's -- he's -- he's making calls to Pharaoh's every single
03:23PM 8 month.

03:23PM 9 But when we talked about it with a witness and got a
03:23PM 10 little more specific, and when you looked at the exhibit in a
03:23PM 11 little bit more detail, you saw he only included lines for the
03:23PM 12 months that Peter Gerace made calls. And in 2013, there was
03:23PM 13 only one month that there was any attempt to call at all.

03:23PM 14 I think there was some testimony from A.P.
03:23PM 15 consistent, like other witnesses, with Peter Gerace being out
03:23PM 16 of the club, and that he had tried to call at some point to
03:23PM 17 get her back in and was unable to do so. He had no
03:23PM 18 involvement with that at all.

03:23PM 19 Doug Augustyniak testified, and he didn't just
03:23PM 20 testify on something you can just swipe away because, oh, I
03:23PM 21 was -- the government doesn't want us to believe most of his
03:23PM 22 testimony. Doug Augustyniak told you that he was fired by the
03:23PM 23 Parrinos, they -- there was a change in a number of positions,
03:23PM 24 and he was one that was out of the club along with Peter
03:23PM 25 Gerace when they were in full ownership.

1 The government used that as a means to try to attack
2 their own witness's credibility when they said to him: You
3 got a job back, that was a pretty good job. You were paid
4 well, right? It was Peter Gerace who hired you back after
5 they gave control of ownership back again.

6 You're presented with the charge that you're
7 presented with. It's not a charge you think that should have
8 been presented to you. It's not about, you know, do we change
9 the charge a little bit to accommodate the way the proof came
10 in. This is not a small variance of dates. We're not talking
11 about a few months. We're talking about an allegation of a
12 continued control of maintenance.

13 You heard the elements already, Mr. Cooper, and
14 you're going to hear them more directly from the judge,
15 maintenance and control.

16 Peter Gerace had no control for over a year. And the
17 government can on -- well, the government is going to have
18 another opportunity to talk to you on rebuttal, they can tell
19 you how you should disbelieve that. But we're talking about
20 proof beyond a reasonable doubt, it's their burden. They --
21 they -- it's their burden to prove that he was maintain --
22 maintaining and controlling the premises all the way back from
23 2006, all the way up to 2019.

24 And they are not going to rebut the evidence that
25 came through their own witnesses that he was out of the club

1 for over a year, to the point where you could never convict
2 beyond reasonable doubt.

3 But the time -- the timeframe matters. It matters to
4 multiple counts. It's not just that one. It's the conspiracy
5 for drug trafficking. It's the conspiracy for sex
6 trafficking.

7 Candidly, going back a moment, it's probably not the
8 conspiracy, the allegations regarding the conspiracy of -- of
9 public corruption, because that one is not tethered to Peter
10 Gerace engaging in a conspiracy that is anchored to Pharaoh's.

11 Well, I mean, really, that's your determination to
12 make. And, really, when you look at it, and given the fact
13 that some of the comments on closing were about the idea that
14 Mr. Bongiovanni was protecting Pharaoh's, and Peter Gerace's
15 involvement in Pharaoh's, maybe -- maybe that it does apply
16 there, too, I don't know. But I am distinguishing it. There
17 is obviously some difference here.

18 That timeframe wipes out the maintenance charge. And
19 I would submit when you listen to the instructions and you
20 hear that on these other conspiracy counts that these are
21 conspiracies that are alleged to start well before Peter
22 Gerace is out of the club and continue all the way through
23 until when they are -- when -- when the charge indicates they
24 end, that if you believe there's reasonable doubt as to
25 whether the conspiracy charged in the indictment was committed

1 based on the fact that there is almost undisputed proof that
2 Peter Gerace was not involved with Pharaoh's for over a year,
3 then you have to acquit on all three of those counts.

4 Now, in addition to that, that -- that theoretically
5 is the end of the analysis. The government will have an
6 opportunity to rebut, they can argue to you why the conspiracy
7 could survive Mr. Gerace being out of Pharaoh's despite the
8 fact that that should sound a little bit inconsistent with
9 what's been argued to you up to this point. But if they want
10 to argue that the conspiracy survives, that the conspiracy is
11 a continuing conspiracy that goes through an entire stretch of
12 over a year that Peter Gerace is out of Pharaoh's, that this
13 is one conspiracy that never stops, if they think that there's
14 evidence to support that, then they'll present you those
15 arguments. If you think there's reasonable doubt, you have to
16 acquit. And there's other reasons to acquit as well.

17 Understanding that there are -- there is evidence
18 that there was drugs at Pharaoh's, there is still a lack of
19 evidence that really corroborates that Peter Gerace was
20 involved in the way that some of the witnesses said he was.

21 His home was searched, Pharaoh's was searched twice,
22 no evidence of drugs. There is no pictures of Mr. Gerace with
23 drugs. There is no recordings other than the one that they
24 gave you of Mr. Gerace ever talking about drugs. No wiretap
25 calls like they had for Jeff Anzalone and K.L., who was not

1 charged. No messages on the entirety of his phone with all of
2 these people that the government has referenced as potentially
3 being coconspirators. Not a single message presented to you
4 recall -- between Peter Gerace and Jessica Leyland out of his
5 phone.

6 There's messages in that phone. You didn't see them.
7 And why do you think that is? Nothing consistent with Peter
8 Gerace being involved in the way that some of the witnesses
9 alleged he was.

10 And another thing about this charge, the conspiracy
11 charge. The conspiracy itself, the agreement is an element.
12 So you do have to find -- find, in order to find him guilty,
13 proof beyond a reasonable doubt that he was in an agreement
14 with somebody else. That's more than finding that he used
15 drugs himself. That's more than finding possession with
16 intent to distribute.

17 You'll see in the indictment, or you'll hear in the
18 indictment, there is a charge of possession with intent to
19 distribute. It's the last count. It's a count of possession
20 with -- bless you -- it's a count of possession with intent to
21 distribute based on the allegation that Mr. Gerace had drugs
22 in November at this incident in the basement, the -- the
23 tampering incident. We're going to talk about that in a
24 little bit.

25 In that situation, what you're finding is: Did he

1 possess it? Did he have the intent to distribute it? That's
2 it.

3 Conspiracy is a lot more complicated than that. It's
4 not just did he possess it. Did he possess it multiple times?
5 Did he buy drugs at some point? Did he give drugs at some
6 point? Those things alone don't automatically establish
7 conspiracy. You have to listen to the judge's instruction.
8 You have to find beyond a reasonable doubt that the conspiracy
9 charged in the indictment in the timeframe that it's charged
10 was an ongoing conspiracy that Mr. Gerace was involved in
11 involving an agreement with others.

12 And you heard testimony of some people who primarily
13 described personal use and incidents that are very similar to
14 the charge of possession with intent to distribute in that
15 November event. You just don't have dates associated with
16 them, and it's all been wrapped together as a conspiracy
17 count. But that doesn't mean that there was an agreement
18 consistent with what you would have to find beyond a
19 reasonable doubt. So that charge is a little bit more
20 complicated than the way maybe it was argued on the closing.

21 And, again, the timeframe is a pretty big piece of
22 this. If Peter Gerace is out of Pharaoh's for over a year,
23 there's no real way to find beyond a reasonable doubt that
24 he's engaged in this conspiracy for the duration of the
25 conspiracy that is alleged in the indictment.

03:31PM 1 Okay. Count 5 is the sex trafficking. And sort of
03:31PM 2 at the outset of this, I will again note, well, this one --
03:31PM 3 this one is another one of those kitchen-sink charges.

03:31PM 4 They gave three buckets. And they said, look, just,
03:31PM 5 you know, pick your poison. Just find one. Find him guilty
03:32PM 6 of one of these. Even if there's problems with each of them
03:32PM 7 individually, just -- just, you know, pick.

03:32PM 8 That's not how it works. So you don't just find
03:32PM 9 proof beyond a reasonable doubt because they gave you
03:32PM 10 different scenarios to pick from. It's not about which one is
03:32PM 11 most likely, it's about did they prove the elements beyond a
03:32PM 12 reasonable doubt. And the three buckets, as they described
03:32PM 13 them, is what happens upstairs, what happens in the VIP area,
03:32PM 14 and the stag parties. And let's go in reverse order.

03:32PM 15 The stag parties. Proof beyond a reasonable doubt
03:32PM 16 Mr. Gerace was engaged in a conspiracy because of what?
03:32PM 17 There's testimony that there was dancers that worked at
03:32PM 18 both -- some of these stag parties and Mr. Gerace? What is
03:32PM 19 there beyond that?

03:32PM 20 Katrina Nigro making some of this up, she said a
03:32PM 21 couple different things. At one point, she said Peter Gerace
03:32PM 22 sometimes didn't want dancers from the stag party to dance at
03:32PM 23 Pharaoh's because of things that they would do. She makes a
03:32PM 24 comment about that at some point, which is not consistent with
03:32PM 25 the conspiracy involving the stag parties. But she does give

1 the government what they're looking for on the stag parties
2 saying, oh, there's some sort of benefit, there's some sort of
3 financial agreement there.

4 And she never really explains it. And I would submit
5 that that's because it's just absolutely bogus. There's
6 nowhere else where you see any testimony establishing that
7 there is an actual conspiracy between these two.

8 I think that the evidence is established that there
9 were dancers at Pharaoh's who also danced at these different
10 stag parties. There's also evidence to establish that dancers
11 would move between clubs. You heard it from almost --

12 A lot of the dancers, a lot of the government's
13 witnesses say, well, I was dancing at this one club, and then
14 I switched over because I heard good things at Pharaoh's.

15 Some of them said I danced at Pharaoh's, and then I
16 started dancing for the stag parties for a year.

17 That -- there's no conspiracy here between different
18 clubs and different stag parties. These are separate
19 entities.

20 The government's own witness, A.G., told you that
21 because she danced for No Limit for a year. The government
22 makes a big point of why she was fired, and we want you to
23 assume that she was fired because she wouldn't go upstairs
24 with Mr. Gerace. Again, just accept that, because that's what
25 we want to allege here. We just want you to accept the

inference that we want to draw on it. Okay?

Whatever the reason is, what's the most important piece of A.G.'s testimony? She never went upstairs, she was in the VIP Room for -- for two days straight, never indicates she saw any sex acts, never testifies about anything suggesting there's sex trafficking at Pharaoh's.

What she does testify, and this is the most important part of her testimony, is that she went and worked for No Limit for a year, it didn't matter that she was fired at Pharaoh's. It had nothing to do with it.

And I asked her, I asked A.G., are they different?

And do you know what her response was? Do you remember? Completely different. She volunteered that in response.

The government is trying to sell you a narrative that is totally inconsistent with the evidence. There is no way it's proof beyond a reasonable doubt to believe that there is a conspiracy between these two separate entities.

They showed text messages, and there's this one sort of -- there's an LOL on it, so I don't know what the context it is, but the comment by LaMont, who didn't testify at this trial, but there's the comment about she does anal, LOL. Which is, you know, grotesque. But that is -- it's -- there's an LOL on there. There's clearly context that we're missing.

What we do have in terms of context before it is a

03:35PM 1 message that's not consistent with conspirators,

03:35PM 2 coconspirators, it's a message that you took one of my top
03:35PM 3 weekend girls.

03:35PM 4 The message before that is Peter Gerace upset that
03:35PM 5 this separate entity resulted in one of his employees being --
03:35PM 6 being taken away. And there's this -- this response from the
03:36PM 7 individual who did not testify here, that -- there was a joke
03:36PM 8 or maybe it's not, because maybe things were happening at
03:36PM 9 No Limit that was different than Pharaoh's. What you do see
03:36PM 10 if you look at that exhibit, and you have to look at it, is
03:36PM 11 they stopped talking after that. Peter Gerace goes a long
03:36PM 12 time without communicating with him again.

03:36PM 13 And the message before, you took one of my top
03:36PM 14 weekend girls, it's pretty clear that they're not
03:36PM 15 coconspirators. In some respects they're competitors. They
03:36PM 16 certainly don't act together.

03:36PM 17 They write text messages about LaMont, or about --
03:36PM 18 about LaMont sending -- saying, I'm gonna send a girl to
03:36PM 19 try -- a potential dancer over to you.

03:36PM 20 And if you go a little bit lower in the exhibit,
03:36PM 21 there is a message in evidence that I don't think was
03:36PM 22 highlighted during the trial, but where -- they might have
03:36PM 23 been, I honestly don't remember -- where they talk about her
03:37PM 24 coming in to try out. The words were "try out." It wasn't
03:37PM 25 she would automatically becomes an employee for Pharaoh's. It

03:37PM 1 was somebody who was consistent with the testimony that they
03:37PM 2 would dance in multiple places, they'd dance in multiple
03:37PM 3 clubs, they would move around different clubs, she was
03:37PM 4 somebody who was interested in dancing for Pharaoh's, LaMont
03:37PM 5 referred her over.

03:37PM 6 That is not a conspiracy. That is simply the nature
03:37PM 7 of the industry, based on the testimony that you've heard.
03:37PM 8 So, just -- let's just wipe out the stags parties. Complete
03:37PM 9 nonsense.

03:37PM 10 The VIP Room is a little bit more complicated. Also
03:37PM 11 nonsense, but more complicated, because you have multiple
03:37PM 12 witnesses talking about it. So it gives you more pause.
03:37PM 13 You've gotta think about what's -- the testimony you heard.

03:37PM 14 But here's the thing about that testimony. There
03:37PM 15 are, there's -- there's a couple different things about it.
03:38PM 16 One is, you heard from a couple of witnesses who had a
03:38PM 17 financial benefit, who had charges, who had reasons to not
03:38PM 18 trust their credibility on it. You had another witness that
03:38PM 19 didn't have some of the same credibility issues, A.P., agree
03:38PM 20 with Mr. Cooper -- it's hard to pronounce her last name, so
03:38PM 21 we're going to continue to go with that. A.P. says didn't see
03:38PM 22 any sex in the VIP Rooms, she says the bouncers were awesome
03:38PM 23 when asked about it. She says they would interrupt if
03:38PM 24 anything inappropriate was happening. And she wasn't the only
03:38PM 25 one who said they witnessed bouncers coming in and

03:38PM 1 interrupting.

03:38PM 2 Some of the same witnesses who said, yeah,
03:38PM 3 occasionally, a patron and one of the dancers would get away
03:38PM 4 with a sex act, I've seen it happen before, would also say, I
03:38PM 5 also saw times where it would get interrupted, where somebody
03:38PM 6 was watching the screen, caught it, and intervened.

03:39PM 7 And the government's witness, Doug Augustyniak, was
03:39PM 8 the only VIP attendant who testified, and he told you that's
03:39PM 9 the reality. We watch the screen, we're doing multiple things
03:39PM 10 at once, if we see it, we'll intervene. And he did.

03:39PM 11 And this isn't helpful to the defense. He wasn't
03:39PM 12 trying to help us. He told in response, when we were saying
03:39PM 13 well, and nobody -- nobody was trying to pay you off, he says,
03:39PM 14 oh, yeah, some customers tried.

03:39PM 15 So, the government can say, oh, he -- he got up there
03:39PM 16 and was trying to help out. No, he wasn't. He was trying to
03:39PM 17 give the answers. Yeah, he may have a problem with the
03:39PM 18 government, that doesn't mean that he was suddenly lying about
03:39PM 19 everything that they don't want you to -- to -- to credit him
03:39PM 20 for.

03:39PM 21 I asked him nobody -- nobody propositioned you, did
03:39PM 22 they? He said, oh, yeah, yeah, some people did. Or he'd say
03:39PM 23 no, he said, if it happened, it was between a customer and a
03:39PM 24 dancer. It was not allowed.

03:39PM 25 And the last questions with Mr. Augustyniak, sorry,

03:40PM 1 just give me a second here.

03:40PM 2 I -- I'm so far off my outline. I may come back to
03:40PM 3 it and actually read you the questions because I have them
03:40PM 4 somewhere. But the short of it that you probably remember is
03:40PM 5 at the end he acknowledges giving this testimony, the
03:40PM 6 government -- in response to defense questions, the government
03:40PM 7 seized on it a little bit on redirect asking questions about
03:40PM 8 that.

03:40PM 9 And on recross asked, okay, customers tried to
03:41PM 10 proposition you. That came from customers, not management,
03:41PM 11 right?

03:41PM 12 Correct.

03:41PM 13 In fact, everything that was ever conveyed to you as
03:41PM 14 a VIP attendant from management or from ownership was the
03:41PM 15 opposite of that, right?

03:41PM 16 Yes.

03:41PM 17 It was not the case that ownership had anything to do
03:41PM 18 with that. And you didn't hear any testimony throughout the
03:41PM 19 trial at all that it did other than L.L.'s testimony. The one
03:41PM 20 who was getting the car insurance paid, the one who changed
03:41PM 21 her testimony between 25 and 500.

03:41PM 22 L.L. is also the one who said she slept with Peter
03:41PM 23 Gerace's brother, David, somebody you really didn't hear any
03:41PM 24 testimony was ever around the club, and then was shown a
03:41PM 25 picture of David during her cross-examination and said I don't

recognize anybody in that picture.

During Brian Burns' cross, showed the same picture and he said, I think -- I believe that's David Gerace and Anthony Gerace. The redirect was well.

People change appearance over time. Okay. Well people do change appearance, but that was a lie. She didn't sleep with David Gerace. She didn't recognize -- she was shown a picture of him here on the stand, wasn't prepared for it, and she goes, I don't know who's in that picture.

L.L. is the only person who conveniently tells you the story of Peter Gerace says, oh, there's Wayne VanVleet, go over there, Brian will look the other way. A sort of perfectly tailored allegation to try to connect Peter to the VIP Room, something that all the other evidence does not support. It's not at all believable.

And you know what else isn't believable about it? There really is no connection established between Wayne VanVleet and Peter Gerace. That's pretty much acknowledged on their closing statement.

They talk about the conspiracy. Yeah, they're coconspirators, they don't even know each other. Peter Gerace doesn't need to know Wayne VanVleet. They know the evidence doesn't support that.

When asked about the other phone contacts, is Wayne VanVleet in his phone? He has tons of contacts. He's a

business owner, he's got contacts all over the place, from the full spectrum of law enforcement, to people who have allegations against them, to people he grew up with. He has all of these contacts in his phone. And Wayne VanVleet, this guy who was supposedly at the club all the time and that L.L.'s testimony they have her say he was -- Peter Gerace's directing her to him, and he's not in Peter Gerace's phone. There's no communication between them, there's no pictures of them together, there's really no other testimony claiming that Peter Gerace even knows who he is.

I don't think you should believe for a minute let alone beyond a reasonable doubt that what was going on in the VIP Rooms was consistent with pervasive sex acts. If there were any, I think the evidence suggests it was an agreement between the dancer and a patron.

And a VIP attendant had six screens up in front of him, he's handling the money, he's handling chips, he's doing all these things at once, he's doing the best he can while also supposed to watch the cameras, and there's testimony that when he would catch something he would intervene. He didn't always catch it. That doesn't make the VIP attendant a criminal, and it doesn't make Peter Gerace a criminal. It just does not.

And if the VIP attendant was getting paid off to look the other way, that does not mean Peter Gerace knew about it.

03:44PM 1 Again, unless you believe L.L.'s testimony beyond a reasonable
03:44PM 2 doubt, unless you wouldn't hesitate to rely on her in that
03:44PM 3 regard.

03:44PM 4 The cameras don't support it. The cameras don't
03:44PM 5 support -- went back seven weeks. The fact that Peter Gerace
03:44PM 6 would make sure the cameras recorded the longest in the VIP
03:44PM 7 area to avoid this type of thing, to make sure that if an
03:45PM 8 allegation is made and directed to him, he has a means of
03:45PM 9 going back and looking.

03:45PM 10 The fact that it exists is reasonable doubt. The
03:45PM 11 fact that when they pulled this these cameras, there was no
03:45PM 12 relevant information identified. Oh, there was fondling,
03:45PM 13 there was touching of the breasts, there was kissing in some
03:45PM 14 instances. Yeah, okay, it's still, not every sin is a crime,
03:45PM 15 it's a lap dance.

03:45PM 16 The government had a chance to review that. They
03:45PM 17 went through it. They saw the pants stain on the patrons,
03:45PM 18 they didn't see sex acts. They saw no vaginal sex, no anal
03:45PM 19 sex, no oral sex. Nothing of that sort.

03:45PM 20 Okay. The last area is the upstairs. And the
03:45PM 21 testimony is -- comes from just -- there's a -- there's a
03:46PM 22 number of witnesses who say they were upstairs and that they
03:46PM 23 used drugs upstairs. Then there are a much, much more limited
03:46PM 24 number of witnesses who claim to have observed or been
03:46PM 25 involved in sex upstairs. You have to distinguish those two

1 things. Okay? Just because there's testimony about things
2 happening upstairs involving cocaine usage, and that there's
3 rumors about other things that would happen upstairs, that
4 doesn't anchor the two together automatically.

5 You have to isolate who actually said that they
6 observed sex acts.

7 Well, Katrina Nigro, again, says I would go up there
8 and I would find used condoms and it's the smell, all this
9 grotesque testimony that she gave you which, again, just --
10 it's Katrina Nigro. It's not believable. And it's
11 inconsistent with the fact that she couldn't go upstairs
12 because she didn't have a key, something the government didn't
13 ask her about.

14 G.R. If you go back and ask for a read-back of her
15 cross, you will hear a couple of things of note. And keep in
16 mind, G.R. is really, I mean, on cross, G.R., L.L., K.L., were
17 I think the three that -- unless I missed somebody, I think
18 those were the three that were just referenced by the
19 government in their closing statement, at least three of the
20 main ones that they argued about.

21 We already talked about K.L. earlier. K.L. was lying
22 to you about a number of things, and it came out that the way
23 they described this interaction is inconsistent with the
24 details that were kept away from you during the direct
25 examination. So, let's set K.L. aside.

03:47PM 1 L.L., we talked about. The type of payments she was
03:47PM 2 receiving, just like K.L. She was getting all kinds of
03:47PM 3 financial expenses to help secure her testimony. Just like
03:48PM 4 other witnesses with credibility issues, she changed her
03:48PM 5 answers significantly. She's the one that we just talked
03:48PM 6 about that said she was sleeping with Peter Gerace's brother
03:48PM 7 and was shown a picture, isn't able to identify who she's
03:48PM 8 looking at.

03:48PM 9 L.L. is also one of the three girls who tried out
03:48PM 10 together. A.A. -- my arrows, as we know from earlier in the
03:48PM 11 trial, are terrible. R.W. And there's L.L.

03:48PM 12 Now, why does that matter? Because L.L. -- all three
03:48PM 13 of them testify. A.A. testified earlier in the trial. It may
03:48PM 14 not have been immediately obvious because the government
03:48PM 15 didn't call them back to back. They called A.A. and R.W.
03:48PM 16 earlier on, and then they waited until the end to call L.L.

03:48PM 17 But if you go back and think about A.A.'s testimony,
03:49PM 18 you'll remember -- and you can get this from a read-back --
03:49PM 19 she doesn't know who Peter Gerace is. She never met him
03:49PM 20 before. She's never even been upstairs.

03:49PM 21 L.L. talked about having threesomes with A.A. and
03:49PM 22 Peter Gerace, just like the David Gerace thing, it's just
03:49PM 23 absolutely bogus.

03:49PM 24 These are both government witnesses. They talk about
03:49PM 25 we called all these witnesses. They contradict each other.

Again, I'm not saying that you should believe A.A. instead of L.L., I'm saying you shouldn't believe either of them.

Because the test is whether you would hesitate, whether you would have reasonable doubt, whether you can't rely on them. If there's inconsistencies, neither of them are somebody you can rely on. You would at least hesitate to think that either of these people are reliable.

I mean, clearly, A.A. came in and gave testimony that the government wanted. She wasn't here to help Peter Gerace. She didn't know who he was. She's never been upstairs. That's just -- that's just the testimony she gave under oath.

L.L., who changed her story multiple times, happens to be the one who says oh, L.L., L.L. knows. Not only knows Peter Gerace, we were having threesomes with him. Just outrageous.

They didn't address any of this in their closing argument. They just told you they cited examples from these witnesses as if they're gospel. This is so far from that.

Now, going back to G.R., there's two main points I want to get across. I understand that it's a dicey area to talk about choice in regards to the dancers, especially if they were using drugs. I understand that gets complicated. I understand the government wants to seize on that. Well, they didn't have any choice.

That's not what G.R. told you.

1 In cross, she said it was her choice. These were her
2 choices.

3 She didn't tell you I was being coerced. She said I
4 was making these decisions myself. And coercion is part of
5 this crime.

6 The government can tell you, well, we think it's
7 coercion even if the witness doesn't, so you should find it's
8 coercion.

9 G.R. was capable of making the choice herself, she
10 told you that she was, even if she was using drugs. She
11 didn't say she was coerced. Okay? That's her testimony.

12 She also told you, and this is worth noting, that
13 Mr. -- Peter Gerace said to her, before she had sex with this
14 individual based on her testimony, is take care of my friend
15 and he gives her \$200.

16 Now, I want to focus on the last part of that, the
17 monetary amount he gave her. They're saying \$200, that's
18 consistent with I guess propositioning her for sex.

19 This is a strip club. Her job, by profession, is
20 dancing. And you heard the \$200 is pretty much consistent
21 with a longer dance in the VIP area.

22 She didn't say he told me to have sex with him. The
23 government can get up here on rebuttal and yell there's no
24 other interpretation of that, but that's not the case at all.
25 That's not the case at all. You are in a strip club, \$200 is

consistent with a longer dance, not to go back and have sex.

They want you to find beyond a reasonable doubt that that's an example of Peter eliciting a commercial sex act. It's one of the only examples that have been given. There's reasonable doubt there. Even if there wasn't the issue of the timeframe, even if the evidence didn't support that this conspiracy does not -- there's no way for it to go, the timeframe that -- that has been alleged here. There's reasonable doubt all day long.

Judge, I know I'm probably going a little later than I said. Do you know how much time I have left?

THE COURT: You've got -- hang on -- over an hour.

MR. FOTI: Okay. Thank you, I won't use it, I promise.

All right. The last sort of bucket of charges that were discussed is the November 2019 charges. Okay? And they're on here. We have three witnesses listed as being relevant to that charge: P.H., Ben Rivera, C.C.

Ben Rivera is somebody you would definitely hesitate to trust. He's somebody that has all kinds of reasons to doubt their testimony. The instructions are going to be consistent with the fact that you should take great care in deciding whether to assess him as credible. And, certainly, the instructions on the proof beyond a reasonable doubt is combined with the presumption of innocence all move you

1 towards the conclusion that Ben Rivera is a hired gun.

2 He talks about an incident that was written about in
3 the newspaper. The government's best argument against that
4 is, well, in the newspaper article, they didn't talk about the
5 gender. So what?

6 You mean that he couldn't learn the gender through
7 talking in the jail? He couldn't have learned it through
8 questions by the government during the course of his
9 debriefing? That's it, the gender? Is why you should believe
10 him? When he tells the government conveniently I have
11 information about something that was in the paper?

12 Ben Rivera's testimony is also inconsistent with the
13 only witness we have to this. And the government can say,
14 well, there's three witnesses, or there's two other witnesses.
15 There's P.H.

16 P.H. is on the receiving end. What she knows is she
17 got a message from C.C.'s account, which was apparently
18 drafted by Crystal Quinn. And she responds the next morning
19 not at all appearing concerned.

20 And I know the government can get up and say, well,
21 you heard her testimony, she was very concerned.

22 You heard what happened with Jessica Leyland, she had
23 every reason to be scared.

24 The response doesn't indicate that at all. She does
25 respond, she didn't have to respond. She responds, stay off

the coke ladies, LOL, or something along those lines.

She wasn't there. She can't testify to what happened.

Who's our witness there? It's C.C.

C.C. does not establish that any witness tampering, anything that was written during that message was done at the behest of Peter Gerace. She gave you specific answers to questions that all cut against that conclusion. And we're talking about Counts 6 through 8. They're all of the same charge, just sort of different variations of it.

C.C. was asked these questions by Mr. Soehnlein:

"You were still in the basement when Crystal had your phone, correct?

"Answer: Yes.

"And for the entire time that she had your phone, correct?

"Answer: Yes.

"Okay. You didn't know what Crystal was saying -- strike that. You didn't know what Crystal was typing on her phone when she had it in her hand, correct?

"Nope.

"Okay. She didn't read it out loud?

"No.

"She didn't pass the phone around before sending it?

"No.

1 "She didn't hand the phone to Peter before she sent
2 it?

3 "No.

4 "You're sure about that?

5 "Yes.

03:57PM 6 "You didn't take the phone at any point that night
03:57PM 7 and review the messages?

03:57PM 8 "No.

03:57PM 9 "You didn't take the phone and send any messages,
03:57PM 10 correct?

03:57PM 11 "No.

03:57PM 12 "You never saw Peter Gerace look at phone that night?

03:57PM 13 "No."

03:57PM 14 There's no testimony Peter Gerace directed it. They
03:57PM 15 have this -- sort of this weird testimony where they try to
03:57PM 16 get you to jump to a particular conclusion that they were --
03:57PM 17 that Peter Gerace was complaining about that he thought --
03:57PM 18 that he thought that P.H. was -- was cooperating or whatever.

03:57PM 19 And then Crystal Quinn, the testimony is Crystal
03:57PM 20 Quinn takes not Peter Gerace's phone, she takes C.C.'s phone,
03:58PM 21 and she sends these messages.

03:58PM 22 And these messages, even though they refer to snitch
03:58PM 23 at some point, and they refer to "ray," which the government
03:58PM 24 has said is "rat," and maybe it is, even though you also heard
03:58PM 25 later on that P.H.'s other name is P.R., whatever it is,

1 there's a ton of stuff in there. It's not about you better
2 not testify. It's not a threat about, you know, someone's
3 gonna come to you if you -- if you testify. It's not about
4 that.

5 There is something personal is written all over that.
6 Personal between Crystal Quinn, if she's the one who's writing
7 the messages, and P.H. The fact that she didn't like her
8 because she's also a snitch, that may have been part of it.
9 But it's not tampering. And if it was tampering, Peter Gerace
10 certainly was not involved. Just because he was present does
11 not make him criminally liable.

12 You specifically heard the testimony Crystal Quinn,
13 according to C.C., was acting on her own when she was writing
14 that message out. She wasn't asking for feedback. She wasn't
15 reading it to anybody. She wasn't handing it around. And you
16 didn't hear any other testimony that suggests that she ever
17 did it at Peter Gerace's request, other than pure insinuation
18 and conjecture. And that's not proof beyond a reasonable
19 doubt.

20 I just need a moment.

21 I -- I hate to take us backwards, but, oh, maybe I
22 won't, I think I just might have closed out. Okay.

23 I hate to take us backward, but it's something I did
24 want to read you, part of Doug Augustyniak's testimony and now
25 I have it. So my cocounsel is a little bit better organized

1 than I am.

2 After -- after -- on cross-examination, Doug
3 Augustyniak revealed, yeah, patrons would try to proposition
4 the VIP attendants. And after the government tried to ask
5 some questions on that to sort of seize upon it, on redirect I
6 asked to clarify what matters to you as jurors in this trial
7 with Mr. Gerace.

8 "Now you were asked about the VIP attendant, and you
9 were asked about being asked by patrons to look the other way
10 correct?

11 "Correct.

12 "Okay. That was a question posed to you or a request
13 to you by patrons correct?

14 "Correct.

15 "It didn't come from other staff members, correct?

16 "No.

17 "It didn't come from Mr. Gerace, correct?

18 "No.

19 "At no time during your tenure did Mr. Gerace tell
20 you, I want you to look the other way during VIP dances?

21 "Never has.

22 "Everything that was conveyed to you was the opposite
23 of that in terms of VIP, correct?

24 "That's correct.

25 "You always were supposed to do everything you could

1 to intervene on sex acts in the VIP area?

2 "Yes.

3 "So the question about patrons asking you, that's
4 completely separate from Mr. Gerace, correct?

5 "Correct.

6 "Mr. Gerace never gave you a tip to look the other
7 way, correct?

8 "Never. He never tipped us."

9 Which maybe is a reason why he would have an issue
10 with Mr. Gerace besides no longer working there, but it's --
11 it's relevant because the government earlier on in the trial
12 really seemed to be trying to advance a theory, and they were
13 asking questions of the idea that more money was made by the
14 club if tips were given to staff. And it was something that
15 they were kind of, I think, sort of exploring earlier on in
16 some of the testimony, which obviously isn't -- isn't at all
17 consistent with reality.

18 "Mr. Gerace never gave you a tip to look the other
19 way, correct?

20 "Never. He never tipped us.

21 "He never asked you to do something like that,
22 correct?

23 "No.

24 "When the VIP attendant would receive a tip from the
25 dancers, there was no payment -- this is where it matters --

1 there was no payment from the tip towards the club, correct?

2 "Correct.

3 So that was a tip that the VIP attendant, the DJ, and
4 those staff members took home with them, correct? That didn't
5 go back to the business, correct?

6 "No.

7 "And it didn't go to Mr. Gerace, correct?

8 "No."

9 All right. Now, in a few moments I'm going to finish
10 up. The government is gonna get another chance to talk to you
11 and we do not. Okay? So this is the point where, as the
12 defense, we turn it over to you.

13 The government's gonna get up and make arguments, and
14 you know that there's things that we would have a response
15 for, but we don't get to give them.

16 This is where we ask you to do the critical thinking
17 that you signed up for. This is where we ask you to hold the
18 government accountable. This is where we ask you to push back
19 against government overreach.

20 When I sit down, that's the last time we get to
21 present any argument we thought of, but it's not the last time
22 that you get to think of what the arguments are in response to
23 what's being said to you.

24 All the government resources that were poured into
25 this case, all of them, and what they presented to you were

half-truths, inconsistent testimony, witnesses who were paid off, witnesses who were inconsistent, who had lied under oath other times, who lied to you on the stand in this trial, some of them who were totally indifferent about that.

This is the point where you deliberate, you can push back against that. When you consider the burden of proof, the government did not meet that burden. Because the quality of the evidence that they presented and the lack of evidence, you are to acquit.

Colleen, I want to try to do this.

THE CLERK: Pull it towards you.

MR. FOTI: Pull it towards me? Oh, this is -- I probably just broke it.

Colleen takes care of all of us.

THE CLERK: Okay.

MR. FOTI: Yep. Thank you, Colleen.

THE CLERK: And then, okay, this is your zoom-in and zoom-out up here, okay?

MR. FOTI: Okay.

THE CLERK: Got it?

MR. FOTI: Thank you.

THE CLERK: You're welcome.

MR. FOTI: This is the jury verdict form. Tomorrow you are going to receive instructions about the law from the judge, and then Monday you're going to start your

1 deliberation. It's not ideal to be starting it right before
2 Christmas, but this -- you folks and the government I know is
3 going to agree this, the Court, I believe everybody in this
4 courtroom will agree, you have been some of the most
5 attentive, focused jurors that anybody could hope for. And
6 despite the holidays, you've all stuck with us. Everybody
7 here appreciates that.

8 What's next is the instructions from the judge.
9 Monday, you are going to start the deliberation process. You
10 are going to listen to each other, and if you have hesitations
11 or reasonable doubts, you're going to express that to each
12 other. Some of them might be agreement with things that we
13 said today. Some of them, as I mentioned earlier, might be
14 things that we didn't think of or at least didn't talk about
15 during the closing argument.

16 You'll listen to each other, and if you agree that
17 it's reasonable to have a doubt under those circumstances, if
18 it's a reasonable doubt, then you have to acquit to any count
19 where there's an element where reasonable doubt exists.

20 And, again, the instructions are going to essentially
21 suggest that if you think a reasonable person would have that
22 hesitation or doubt, even though maybe you, yourself really
23 don't think you have it, if your fellow juror expresses
24 something and you think about it and say, well, it's
25 reasonable for them to feel that way, that's reasonable doubt,

04:07PM 1 you have to acquit.

04:07PM 2 When you get to the point in your deliberation where
04:07PM 3 you make a determination on whether there is reasonable doubt
04:08PM 4 as to any element of the charge, the verdict only supports --
04:08PM 5 the evidence and lack of evidence only supports one verdict,
04:08PM 6 and that is a verdict of not guilty.

04:08PM 7 When we get to Count 2, paying a bribe to a public
04:08PM 8 official, when you consider the lack of evidence and the
04:08PM 9 problems with the evidence here, there's only one verdict that
04:08PM 10 the evidence supports, and that is a verdict of not guilty.

04:08PM 11 When you get to Count 3, maintaining a drug premises,
04:08PM 12 and you listen to those charges, and you hear the way it was
04:08PM 13 charged is -- is an allegation that it continued over such a
04:08PM 14 span of time, even if there wasn't all this reasonable doubt
04:08PM 15 based on lack of evidence, there's no way it was proven based
04:08PM 16 on you what heard, the verdict is not guilty.

04:08PM 17 When you get to Count 4, conspiracy to distribute a
04:09PM 18 controlled substance, and all the reasons we talked about why
04:09PM 19 there's reasonable doubt, when you think about the issues with
04:09PM 20 the timeframe, when you think about the issues with the
04:09PM 21 witnesses, when you think about all the evidence you did not
04:09PM 22 hear, the verdict is not guilty.

04:09PM 23 When we get to Count 5, conspiracy to commit sex
04:09PM 24 trafficking, and you think about the inconsistencies between
04:09PM 25 the government's own witnesses, when you think how they tried

1 to throw the kitchen sink at you, they tried to tell you,
2 yeah, just any of these buckets and each one came up short,
3 there's only one verdict that's supported by the lack of
4 evidence here, and that is not guilty.

5 When we get to Count 6 -- Count 6, Count 7, Count 8,
6 all tampering with a witness, all the same allegation, all
7 completely inconsistent with the evidence that you have. And
8 when you evaluate that charge, it is not guilty, not guilty,
9 and not guilty.

10 Finally, I'll leave that one to you.

11 Do you believe C.C. that Peter Gerace is the one who
12 brought drugs there and he possessed it with intent to
13 distribute, there is not a conspiracy element. There is not a
14 timeframe that extends over a period of time where Mr. Peter
15 Gerace was not in the club. If you believe that beyond a
16 reasonable doubt, then you may make a verdict of guilty here.

17 But I would suggest, the burden being a high one, and
18 the possibility that somebody else was responsible for
19 bringing the cocaine is enough to acquit as to this, that on
20 this one, as well, the verdict is not guilty.

21 You'll make that determination after you have an
22 opportunity to evaluate all the evidence.

23 Members of the jury, I've been proud to be a part of
24 this trial and to stand in front of you to represent Peter
25 Gerace. I appreciate you listening throughout the entirety of

04:11PM 1 this.

04:11PM 2 Like I said, I won't get another opportunity to talk
04:11PM 3 to you, Eric Soehnlein doesn't get up to talk to you, but we
04:11PM 4 trust that you're going to do your job at this point. We
04:11PM 5 trust that you're going to hold the government accountable,
04:11PM 6 and you are going to choose to push back against the
04:11PM 7 government overreach in this case.

04:11PM 8 Thank you.

04:11PM 9 **THE COURT:** Okay. We're going to take another break
04:11PM 10 now. Before we do that, though, I want to say something about
04:11PM 11 the objection that Mr. Tripi made that I overruled.

04:11PM 12 I overruled that objection not because I disagree
04:11PM 13 with what Mr. Tripi was saying. Mr. Tripi said that Mr. Foti
04:12PM 14 had made a misstatement of the law.

04:12PM 15 The reason I overruled the objection is because what
04:12PM 16 lawyers say to you is simply argument. What they say to you
04:12PM 17 about the facts is not evidence, and you're not to accept what
04:12PM 18 they say simply because they said it.

04:12PM 19 What they say to you about the law is not what the
04:12PM 20 law is. I'm going to tell you what the law is tomorrow. So,
04:12PM 21 that's why I overruled the objection.

04:12PM 22 The lawyers can make whatever arguments they want to
04:12PM 23 make to you about the facts and about the law. You can accept
04:12PM 24 those arguments, you can reject those arguments. What they
04:12PM 25 say is not evidence, and what they say is not the law. Okay?

1 So that's why I overruled that objection.

2 We're going to break for about ten minutes. Let's
3 come back at 4:25. Come back at 4:25 to finish up. Okay?

4 Remember my instructions. Don't talk about the case
5 even with each other, don't make up your minds, folks. Not
6 just yet.

7 (Jury excused at 4:12 p.m.)

8 **THE COURT:** Anything before we break?

9 **MR. COOPER:** Just, I want to say I appreciate the
10 explanation of the overruled objection. I think it cleared up
11 that the Court wasn't disagreeing with the objection.

12 **THE COURT:** Yep.

13 **MR. TRIPI:** And I did my best not to object --

14 **THE COURT:** No, no, I know you did, Mr. Tripi. I --
15 I -- I -- I know you did. I know you did. And you know that
16 I give very wide latitude in summation for that very reason,
17 because I'm going to, you know, I instructed the jury then
18 and -- and I will instruct the jury again that what I say is
19 the law, not what you say and not what the defense says.

20 So I just -- I think it's -- it bears reinforcing
21 when there's an objection made, that's all.

22 **MR. TRIPI:** Thank you.

23 **THE COURT:** Okay. Anything from the defense before
24 we break?

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1 **MR. FOTI:** No.

2 **MR. SOEHNLEIN:** No, thank you.

3 **THE COURT:** Okay. You've got 32 minutes, and I'm

4 gonna hold you to it. I'm gonna -- the gong is going at 32.

5 **MR. TRIPI:** You didn't have to pull the cane on any

6 of the trial, I get it.

7 **THE COURT:** Okay. I just want you to understand.

8 Okay.

9 **THE CLERK:** All rise.

10 (Back on the record at 4:24 p.m.)

11 (Jury not present.)

12 **THE CLERK:** We are back on the record for the

13 continuation of the jury trial in case numbers 19-CR-27 and

14 23-CR-37, United States of America versus Peter Gerace Jr.

15 All counsel and parties are present.

16 **THE COURT:** Okay. Anything that we need to do before

17 we bring the jury back?

18 **MR. TRIPI:** No, Your Honor.

19 **MR. SOEHNLEIN:** No, Your Honor.

20 **THE COURT:** Okay. At the very end, once we're done,

21 I want to talk about the jury charge. I've made some

22 decisions on those final -- or, at least some tentative

23 decisions. We'll have a little more, perhaps, argument

24 tomorrow morning, but I want to -- I want to just give you my

25 thoughts this evening because I know Mr. Soehnlein's not going

1 to be here tomorrow, and I want him to have the opportunity to
2 weigh in through Mr. Foti. So I think it's only fair to give
3 you an idea of where I'm coming from on those three charges.

4 Okay. Once Pat -- do you know how to get ahold of
5 Pat? Can you?

6 (Jury seated at 4:27 p.m.)

7 **THE COURT:** The record will reflect that all our
8 jurors, again, are present.

9 Mr. Tripi, you may begin.

10 **MR. TRIPI:** Thank you. We're almost there.

11 Now is just about the time for you to use your good
12 judgment, your common sense, and your life experience to
13 determine what happened here. But by now, you know what
14 happened here.

15 And you also know that when you dance between the
16 rain drops, you get wet.

17 Through six weeks, 45 or so witnesses, over 150
18 exhibits in evidence, this defendant right here is soaked in
19 guilt.

20 This is not a kitchen-sink approach. There's a ton of
21 evidence. That's the difference.

22 And the defendant's no hero or sitting here for two
23 months, listening to victim after victim whose life he helped
24 ruin through his club, through the path to hell that he sent
25 them down. Making money off of their bodies, their trauma,

1 and the bank that he called his VIP Room.

2 Now, sure, he doesn't like the facts, the facts that
3 you learned about in this trial, so he attacked the messengers
4 of the facts. The messengers who brought the evidence to
5 court. And that's okay.

6 But the government's not on trial here, the defendant
7 is. This is his trial. This is about what he did. These are
8 about his choices. And it's up to you to decide the facts,
9 and those facts prove him guilty.

10 But the defendant would have you believe in some sort
11 of upside-down world that the agents who investigated his
12 crimes, who exposed Bongiovanni's corrupt relationship with
13 him, who exposed his corrupt connections to a New York State
14 Supreme Court judge, who exposed through the evidence they
15 brought into this courtroom his connections to the Outlaws
16 Motorcycle Club, who provided witnesses who testified about
17 threats of coercion and fear, and his connections or reputed
18 connections to Italian Organized Crime through his family.
19 Somehow, that's the government's fault? No.

20 These are about his choices, what he did to real
21 people who sat there and told you about it, embarrassed,
22 embarrassed by what they had to talk about.

23 So, you didn't hear much. You didn't hear much about
24 the facts and the actual testimony from witnesses in this
25 trial and the actual exhibits in the courtroom. We'll go

1 through some of it.

2 You didn't hear much about specific testimony about
3 what happened at Pharaoh's. You heard cherry-picked portions?
4 You heard cherry picked? Cherry-picked sentences of
5 cross-examination.

6 Think back to the direct exam, when people are able
7 to speak freely in terms of open-ended questions, where they
8 say what happened. Compare that when you're thinking about
9 what was cherry picked here.

10 You didn't hear much about the actual threats made to
11 P.H.? When Mr. Cooper was reading them, you knew it was
12 coming from Peter because that's whose name Crystal referenced
13 in connection with calling her a narc and a rat.

14 And C.C., C.C. told you he sat feet away while it
15 happened. Of course, he got buyer's remorse later.

16 So let's get back to reality, the facts that you know
17 happened based on the evidence.

18 Facts? Joe Bongiovanni and this defendant have been
19 friends for 36 years, his text message. That's back to 1982.

20 Joe Bongiovanni became a DEA agent here in 2003. He
21 started funneling information to this defendant in 2005.

22 Is there any surprise with that type of powerful
23 insider working against people like this who investigate cases
24 from the inside that he never got caught?

25 And then double tap that with a corrupt New York

1 State judge, who happens to be the judge on a protective order
2 when the State police are trying to make drug buys in
3 Pharaoh's. Are any of you shocked that no actual drugs got
4 found?

5 But you have witnesses. And those witnesses have
6 eyeballs, and brains, and ears, and they came here and told
7 you about it.

8 You want to talk about the drug evidence that wasn't
9 seized? His corruption relationships are the starting point
10 for that discussion. And those corrupt relationships, the
11 corrupt relationship with Joseph Bongiovanni, are why he's
12 guilty of Counts 1 and 2.

13 And, you know, there was a lot of talk about, you
14 know, the government this, and the government that, and you
15 only heard testimony. The judge is going to instruct you on
16 the law. He's going to tell you testimony is evidence, just
17 like Mr. Cooper did. Just like Mr. Cooper did. Because if
18 testimony's not evidence, if testimony is not evidence, then
19 think of this hypothetical: That any person walking down the
20 street alone who gets robbed is a victim of a crime, that by
21 definition can never be solved? That's a ridiculous notion.
22 And that's not the law that this judge is going to give to
23 you.

24 So now, getting back to facts that were presented to
25 you during trial, back during opening statements I told you

that the defendant picked the most vulnerable women because he could control them. So he could make enough money through their exploitation in the downstairs VIP Room, the place he called the bank. And so he could use them as his own sexual playthings for himself and his prominent friends before discarding them for a new model.

They were all the same to him. Just like they were the same to Doug: Disposable, replaceable, run them into the ground until they're broken, only to be replaced by new favorites.

He also picked them because he believed their vulnerabilities were an insurance policy from this day coming. As I said in the beginning, their vulnerability, their addictions, their frailty were part of the business model. Part of the reason he controlled them through their addictions, so if this day came where his conduct came to light, he'd use it against them.

He'd use their addictions, their frailties, ones that he enhanced or started, against them as an insurance policy to discredit them so you wouldn't believe them.

And that's the defense argument, the one he had in his mind way back when he was doing it, that's the argument you just heard. Blame the victims. Don't look over there. Don't look at the defendant. Don't scrutinize his conduct. Blame the victims.

As you know by now, each of them were vulnerable in their own ways. All of them became addicted to drugs or those addictions worsened exponentially through the drugs either the defendant fed them or others did at Pharaoh's.

By now, the evidence has shown you that he underestimated them. It has shown you through each of their unique yet similar experiences at Pharaoh's over years, 2009 it's happening to K.L. and G.R., 2018 it's happening to L.L., and at times in between. How he exploited those addictions to get them to behave in ways they're not proud of because he wanted that protection from this day.

But in a few moments when you start to deliberate, and really listen to what they said, it'll bind him to justice.

When you apply your good judgment, your common sense to what you saw play out in this courtroom, it'll prove his guilt beyond a reasonable doubt of every one of those counts that Mr. Foti just went and checked boxes on.

Speaking of that, you just heard a lengthy summation by a skilled advocate for the defendant. But that's not evidence. You are the sole arbiters of the facts. And the facts came from the dozens of witnesses who testified, those 150 or so exhibits, and all of that you consider in totality, and it comes together, layer upon layer upon layer, over two months, corroborating each other on the major points, those

elements that we've proven beyond a reasonable doubt.

And that's what we need to prove, are the elements, and each charge only has two or three. Not every little fact, not every little detail.

If I asked you what everybody wore yesterday, you'd probably have a bunch of different answers. But you'd know for damn sure you all sat in these chairs, right? The main point would be we had jury duty yesterday.

Facts plus law equals verdict. You heard it before. That's the formula. The facts come from the evidence in the courtroom.

Now the defense repeatedly invited you to speculate. You heard things like you can only imagine, you can only imagine, you can only imagine. Speculation, imagination, is not evidence. Not in this courtroom.

Rhetorical questions are not evidence. Suggestions about possibilities and sarcasm is not evidence.

It's possible that you're sitting right now in a rocketship to the moon, but the evidence is you're in a federal court building listening for the final time to an attorney talk to you.

The evidence is how you perform your duty, your function. You review the testimony, the exhibits, and you render a verdict based on that.

So every invitation you just heard beyond something

04:38PM 1 that was in this courtroom, or an exhibit you can see, reject
04:38PM 2 it. Reject it. Those are invitations to speculate, nothing
04:38PM 3 more, reject them.

04:38PM 4 Focus back on the evidence. Facts plus law equals
04:38PM 5 verdict. That simple equation applied to the elements
04:39PM 6 Mr. Cooper went through in detail that he's guilty, as sure as
04:39PM 7 you're sitting in those chairs.

04:39PM 8 The proof doesn't need to be perfect. After all,
04:39PM 9 people aren't perfect. Nobody is. Everyone's unique. Some
04:39PM 10 are in different stages of their recovery. Some are handling
04:39PM 11 the trauma in their life better than others. But based on
04:39PM 12 their testimony and the boulders of it, the important parts of
04:39PM 13 it, they corroborate each other and are corroborated by
04:39PM 14 exhibits.

04:39PM 15 And that proof, when you look at it through the
04:39PM 16 proper lens with your common sense and life experience, the
04:39PM 17 proof's overwhelming. And it establishes each element of each
04:39PM 18 crime that we need to prove beyond a reasonable doubt.

04:39PM 19 A last word about sort of the defendant's arguments
04:39PM 20 in that regard. The defendant's arguments would be like
04:39PM 21 having you be in a forest, and you know you've entered the
04:39PM 22 forest, but instead of just knowing you're in the forest and
04:39PM 23 calling it a forest, they would have you look to fixate on
04:40PM 24 little flaws on each little tree, and not realize you're
04:40PM 25 standing in a forest.

1 The evidence was all around you in this courtroom.
2 It's there for you, just like you'd be in the forest. It's
3 obvious where you are, you're in a courtroom with facts that
4 prove this defendant's guilt.

5 Okay. We can keep up Exhibit 555, Ms. Champoux, just
6 keep it in the background.

7 Choices. The defendant's -- the defense started this
8 way, they sort of ended this way. Choices. This case is
9 about one person's choices, the defendant's.

10 To the extent you heard argument, though, about the
11 different dancers' choices, other than the initial choice to
12 go work at Pharaoh's, these were not choices. Very quickly
13 after that, they became something much different.

14 This gets back to the business model the defendant
15 set up. Once there, and once in the throes of addiction that
16 he created like he did with L.L. and others, or he exacerbated
17 like he did with G.R. and others, for those drug-addicted
18 dancers, there became only the illusion of choice.

19 For the drug-addicted dancers that he either pumped
20 up on drugs or helped keep malleable supplying them with
21 drugs, there was no real choice. They weren't building their
22 résumés to go function in society at that point. They were
23 addicted to drugs, and he knew that.

24 A dancer operating under those severe addictions
25 where they would do literally anything to avoid being sick,

04:41PM 1 lick the bottom of the toilet seat if requested, is no more
04:41PM 2 able to make a rational and logical choice when it becomes --
04:41PM 3 when it comes to a sex act or anything else important in their
04:41PM 4 life than a child. That's what you're dealing with here.

04:42PM 5 As Rebecca Bender told you, and based on the other, I
04:42PM 6 submit, powerful testimony you heard, the women who succumbed
04:42PM 7 to the defendant and their business model: G.R., L.L., K.L.,
04:42PM 8 P.H., A.A., K.A. and others -- they were operating under
04:42PM 9 invisible chains.

04:42PM 10 The defendant and Pharaoh's were like a beacon for
04:42PM 11 the drugs and the money they needed for the drugs. Because at
04:42PM 12 that point, once his hooks were into them and that lifestyle
04:42PM 13 were hooked into them, they couldn't do anything else. They
04:42PM 14 couldn't function. And in that way, he and those working with
04:42PM 15 him, that's how they overcome their will.

04:42PM 16 The whole thing was made to set up like Rebecca
04:42PM 17 Bender educated you about. To position the dancers as the
04:43PM 18 up-sellers. Because to the -- the customer, to the unwitting
04:43PM 19 customer -- let's say the regular frat boy who walks in there
04:43PM 20 one night, right, he's not doing anything wrong. To the
04:43PM 21 regular customers, the dancer's doing these things.

04:43PM 22 But to the whales, the high-paying VIPs, the ones he
04:43PM 23 really wanted to spend thousands and thousands of dollars like
04:43PM 24 Wayne and Joseph Barsuk and those creeps, they knew the deal.
04:43PM 25 And the deal was get your rocks off on these women in one way

04:43PM 1 or the other. And what's happening? They're there, that
04:43PM 2 takes more time, that takes a longer dance, and ultimately
04:43PM 3 with the split in the percentage, that's money in his pocket.
04:43PM 4 It's how he ends up with a mansion, a Maserati, a Harley
04:43PM 5 Davidson, a pool with a slide.

04:44PM 6 And then he's got the audacity to sue P.H. who can't
04:44PM 7 rub two pennies together and is homeless living on the street.
04:44PM 8 And then apparently, it's the government's fault for making
04:44PM 9 sure she doesn't die and charging, her as you heard Brian
04:44PM 10 Burns talk about doing. And then she messes up again because
04:44PM 11 she can't get her life together. But she was 18 when she
04:44PM 12 walked into his apartment and he gave her coke and a bottle of
04:44PM 13 alcohol. Those are the facts from that witness stand.

04:44PM 14 So those up-selling dancers, they were his bank.
04:44PM 15 Talk about coercion, control, exploitation?

04:44PM 16 Rebecca Bender explained most sex trafficking, like
04:44PM 17 that which you saw in this trial, is hiding for you in plain
04:44PM 18 sight.

04:44PM 19 The supposed gentleman's club, like Mr. Cooper said,
04:45PM 20 was a brothel with a liquor license and a neon sign. So
04:45PM 21 people like E.H., who stripped all over the country, still
04:45PM 22 came back here offended by the fact that she got jizzed on and
04:45PM 23 was told she can't call the police. She's no shrinking
04:45PM 24 violet. She told you she worked in strip clubs in multiple
04:45PM 25 states. Yet she was back here -- not bizarre, not bizarre,

04:45PM 1 offended and autistic. Team Don't Get Jizzed on and Not Call
04:45PM 2 the Police.

04:45PM 3 His bouncers, were Team Grind on Them, because that's
04:45PM 4 what he wanted, to keep these dancers dancing longer, making
04:45PM 5 him more money.

04:45PM 6 So apply the facts plus the law, that will get you to
04:45PM 7 the right verdict: Guilty.

04:45PM 8 You heard about CEO pimps and Romeo pimps. He
04:46PM 9 bounced between the two. Just because he doesn't wear the
04:46PM 10 floppy hat with the cane, nothing different than a pimp.
04:46PM 11 That's what the evidence showed.

04:46PM 12 Talk about threat of severe harm, severe withdrawal?
04:46PM 13 There's no doubt about that. None. Based on the drug
04:46PM 14 addictions of these dancers you heard about.

04:46PM 15 Talk about threat of harm? He employed the leader of
04:46PM 16 the Outlaws Motorcycle Club, first as your cleaner, then as
04:46PM 17 your manager, and having others work there. Talk about threat
04:46PM 18 of harm? That's coercion.

04:46PM 19 It's not just the drugs. It's the drugs; it's the
04:46PM 20 Outlaws; it's him telling people he's in the mob; it's his
04:46PM 21 family reputation; it's him pulling dancers off stage; it's
04:46PM 22 him blackmailing dancers and telling them you won't be able to
04:46PM 23 work anywhere else like he told L.L. when she, I'm sure as you
04:46PM 24 know, based on your good judgment and common sense, mustered
04:46PM 25 up enough courage to say I'll dance elsewhere, and he said no

04:47PM 1 you won't.

04:47PM 2 Do you know how hard that must have been for her,
04:47PM 3 back then, to say that to him?

04:47PM 4 Control. Coercion. Domination. That's what he did.

04:47PM 5 The camera system? Let's dispense with that.

04:47PM 6 He knew he was under investigation since early 2019.

04:47PM 7 He was stopped. His brother was arrested and charged, he was
04:47PM 8 stopped, his phone was seized. There's no camera footage
04:47PM 9 before October 21st, 2019.

04:47PM 10 Maintaining a drug premises? Let me talk about minor
04:47PM 11 inconsistencies for a moment. Minor inconsistencies between
04:47PM 12 witnesses are the hallmark of truth. Nobody remembers
04:47PM 13 something the same way. That goes back to describe your
04:47PM 14 favorite play from the Bills game last week, you'll all
04:47PM 15 describe it differently, you all saw the same play. And these
04:48PM 16 dancers saw the same plays play out with their bodies over and
04:48PM 17 over and over again.

04:48PM 18 They talked about maintaining a drug premises.
04:48PM 19 Listen to this, the judge closely. Permanently or temporarily
04:48PM 20 from 2006 to 2019, he maintained Pharaoh's.

04:48PM 21 The fact that drug distribution was discreet from
04:48PM 22 some customers, that's all that was discreet there, as R.W.
04:48PM 23 explained to you.

04:48PM 24 The judge isn't gonna tell you that the drug use and
04:48PM 25 distribution needed to be open and obvious at all times, just

04:48PM 1 that it was an important part of the business, important part
04:48PM 2 of what was going on there. Mr. Cooper handled that.

04:48PM 3 And as to the conspiracy, there's two objects. Not
04:48PM 4 just tied to Pharaoh's. You don't get to leave Pharaoh's and
04:48PM 5 then go deal drugs at your house. He's charged with a
04:48PM 6 narcotics conspiracy. He distributed drugs to Matt Albert in
04:48PM 7 a parking lot at Donut Kraze. What was that?

04:49PM 8 That wasn't how the conspiracy works. There's stuff
04:49PM 9 happening at Pharaoh's, but he's still a drug dealer when he
04:49PM 10 walks out and sells to other people.

04:49PM 11 And there's still a conspiracy going on. Just
04:49PM 12 because he has an ownership dispute in 2013, go to the direct
04:49PM 13 examinations of the witnesses on that point. You see phone
04:49PM 14 records. There were still phone calls in 2013. There's no
04:49PM 15 actual evidence that you saw of any court order or anything
04:49PM 16 like that that Peter Gerace wasn't supposed to be there.

04:49PM 17 And guess what? You're not supposed to sell drugs
04:49PM 18 either. He did that anyway.

04:49PM 19 You're not supposed to use drugs on probation. He
04:49PM 20 did that anyway.

04:49PM 21 So this notion that he wasn't supposed to be at
04:49PM 22 Pharaoh's? Wrap your minds where that -- those words were
04:49PM 23 first uttered in this courtroom. It wasn't from that witness
04:49PM 24 stand, it was from this podium from an attorney.

04:49PM 25 Just because they got some people to say yeah, maybe,

04:49PM 1 I don't remember.

04:49PM 2 L.L. told you I don't ever remember a significant
04:50PM 3 stretch where he wasn't there. I think she would know, as he
04:50PM 4 had vaginal sex and stuck his penis in her mouth while holding
04:50PM 5 drugs over her head. I think she would know. You know she
04:50PM 6 would know.

04:50PM 7 Talk about credibility? P.H.? She owned what she
04:50PM 8 said about the watch. The federal investigation wasn't about
04:50PM 9 his stolen watch, members of the jury.

04:50PM 10 K.L. They didn't ask too much about the moment in
04:50PM 11 time when he pulled his pants down. Did they ask her much
04:50PM 12 about that? No. They wanted to ask her about all the other
04:50PM 13 problems she had in life, problems that happened after he got
04:50PM 14 her addicted to drugs.

04:50PM 15 They want to throw all that in K.L.'s face and trip
04:50PM 16 her up a little bit? Sure.

04:50PM 17 But remember the moment when she couldn't even speak
04:50PM 18 about when she was alone in the room with him. Do you think
04:50PM 19 she's some actress, she just missed her calling? She just
04:50PM 20 missed her Academy Award winning moment? Or was that trauma
04:51PM 21 that you saw?

04:51PM 22 And it sucked for Mr. Cooper to have to ask her those
04:51PM 23 questions. But I submit to you it was real, and you all saw
04:51PM 24 it.

04:51PM 25 Katrina Nigro. I'll get to her in a moment.

04:51PM 1 L.L. Really? She's not credible? Her grand jury
04:51PM 2 testimony was that she engaged in hundreds, a couple hundred
04:51PM 3 sex acts. They're 25 men, a couple hundred sex acts. So she
04:51PM 4 testifies about 500 sex acts here. There's your big
04:51PM 5 inconsistency, guess we should all go home.

04:51PM 6 L.L., who talked for hours, about how different men
04:51PM 7 all connected to this defendant in one way, shape, or form.
04:51PM 8 His brother, his liquor distributor, abused her body, holding
04:51PM 9 drugs over her head like training a dog to go to the bathroom
04:51PM 10 outside.

04:51PM 11 That's an example Rebecca Bender gave you about how
04:52PM 12 the drugs are used to control people. It's the exact same
04:52PM 13 example she testified about, that's how L.L.'s life was.
04:52PM 14 Making up anal sex and all that stuff? You know better.

04:52PM 15 Katrina Nigro. She's only the star witness -- I
04:52PM 16 guess according to the defense, Katrina Nigro should be the
04:52PM 17 only picture on 555. There's a lot of other stuff up there,
04:52PM 18 there's a lot of other people, there's a lot of other
04:52PM 19 exhibits, but guess what? Katrina Nigro, she's only a star
04:52PM 20 witness in their minds. But in your minds, she's one witness
04:52PM 21 who provided information for you to evaluate.

04:52PM 22 So, yes, was she corroborated? Jenny Carter
04:52PM 23 corroborated her about the wedding, the fraudulent wedding.

04:52PM 24 The forged marriage certificate corroborated her when
04:52PM 25 you compare Anthony Gerace's actual signature on his federal

plea agreement with the forgery on the marriage license.

The defendant's texts with Bongiovanni establish she was at that dinner where the envelope was handed over.

Phone records corroborate her.

Judge Michalski's emails to Fred Playtek -- you remember she told you Anthony was mad that his name was forged? Then Judge Michalski starts trying push through the pistol permit, let's make Anthony happy.

The contacts in the defendant's phone match the categories and people that she said went upstairs. She's Nostradamus now? She knows all the people in his phone? Or did she make relevant observations, admit to you that she walked some people up after the defendant would give her the key, including Judge Michalski, and then dancers had sex.

There's nothing -- there's nothing, I submit to you there's nothing novel about old men wanting to have sex with young women. And that's what he did. And he used drugs, and his position of power to do it for him and his buddies for the reasons Mr. Cooper told you about.

Let's talk more. The text message with Judge Michalski, let's get pussy. Talking about Shelby. Mocking Katrina. All corroborate things Katrina told you.

Anthony Casullo, a DEA agent testifying about a conversation with Bongiovanni about overdoses at Pharaoh's, corroborates Katrina.

04:54PM 1 Okay, so her estimate --

04:54PM 2 Pull up exhibit with Katrina, 241 or 240, whatever it
04:54PM 3 was, Ms. Champoux, I'm sorry, I've got like five minutes left.

04:54PM 4 -- all corroborate her, begrudgingly.

04:54PM 5 The other one, 240B. All right. We'll forget the
04:54PM 6 photos.

04:54PM 7 She was -- she was in Pharaoh's in 2014. She's in
04:54PM 8 pictures. Do you want to talk about a conspiracy? Scooter,
04:54PM 9 Darryl LaMont, would give drugs to L.L. when she couldn't
04:55PM 10 dance. Peter made sure L.L. was able to dance because she was
04:55PM 11 a favorite who made him a lot of money.

04:55PM 12 A picture speaks a thousand words. That's a picture
04:55PM 13 of a conspiracy.

04:55PM 14 It didn't end there. LaMont provided multiple
04:55PM 15 services, drugs to dancers, and then they shared personnel.
04:55PM 16 So much so that LaMont knows which of this defendant's dancers
04:55PM 17 do anal. Hahaha. I guess it's a joke.

04:55PM 18 Nothing funny about that joke, and you all know it,
04:55PM 19 because it's not a joke.

04:55PM 20 Who else talked about dancers overdosing? R.W.,
04:55PM 21 E.H., L.L. overdosed herself, K.M.

04:55PM 22 K.M. coming back from Pennsylvania, no stake in this
04:55PM 23 case, tells you the defendant admits the bikers got rid of a
04:55PM 24 body. He doesn't know what they did with it.

04:56PM 25 I'm gonna skip ahead a little bit. I'm going to have

1 a few minutes to go.

2 The defendant doesn't have to know about each
3 transaction of drugs at Pharaoh's, it was his business model.
4 You heard about it. Marcus Black, A.A., Cherry, all of those
5 people working, putting drugs in people's hands, he did it
6 himself.

7 But guess what? The CEO of McDonald's doesn't have
8 to watch people flip burgers, he knows they're being flipped,
9 'cuz it's part of the business. It's part of the business
10 that makes the CEO money. That's this defendant.

11 The defendant would have you believe he wasn't there
12 in 2013. There's zero evidence of that. No evidence that he
13 wasn't allowed in the club. No evidence of a court order. No
14 evidence where hypothetically he starts to care about the law
15 and doesn't show up.

16 But once Don Parrino was fully out of the picture, it
17 revved up more. Bring in the Outlaws, let's ramp it up more.
18 More drug trafficking, more sex trafficking.

19 And that gap in time that Mr. Foti is talking about,
20 there's zero significance to that. The judge is going to
21 instruct you on the law. It's on or about the dates charged
22 in the indictment. So if someone lays low and doesn't sell
23 drugs for a little while, they're not out of the conspiracy.
24 But you have no evidence that this defendant never stopped,
25 only words from this podium, not that witness stand.

04:57PM 1 L.L. versus A.A. In the last minute or so that I
04:57PM 2 have, the defense highlighted for you their differences in
04:57PM 3 their testimony. Well, guess what? I submit to you that L.L.
04:57PM 4 is further along in her healing, that she is more willing to
04:57PM 5 talk about her traumatic experiences.

04:57PM 6 A.A. couldn't even look at a photo of Wayne VanVleet.
04:57PM 7 L.L. was able to look at him and identify him.

04:57PM 8 Don't hold it against A.A. that she didn't fully
04:58PM 9 disclose all of her trauma before you like L.L. was, or like
04:58PM 10 G.R. was. But you should believe the parts that she told you,
04:58PM 11 that she mustered the courage to tell you about.

04:58PM 12 Last thing. They talked to you about missing
04:58PM 13 witnesses, other people who were interviewed. Well, guess
04:58PM 14 what? Those were just more invitations to speculate. Reject
04:58PM 15 it.

04:58PM 16 It's our burden of proof, our burden to prove the
04:58PM 17 case beyond a reasonable doubt. We embrace that burden. But
04:58PM 18 the defendant has the ability and the right to subpoena
04:58PM 19 witnesses, so that's just simply not evidence in the case. So
04:58PM 20 to the extent they want you to speculate? Reject it.

04:58PM 21 All right. I'm wrapping it up. I have 45 seconds to
04:58PM 22 go. So here we are. I've got a whole bunch more to say, but
04:59PM 23 I can't say it in that amount of time, so your good judgment,
04:59PM 24 your common sense, your recollections are gonna fill in the
04:59PM 25 gaps of the arguments that I want to make.

04:59PM 1 The last thing I'll say is this: Their faces and
04:59PM 2 their experiences were all unique, yet horribly similar. He
04:59PM 3 started them down the path to destruction, the one he
04:59PM 4 exploited, the business model he chose, the choices he made,
04:59PM 5 while he was protected by a corrupt federal agent, and when
04:59PM 6 that didn't work anymore he tried to tamper with witnesses.

04:59PM 7 The evidence is overwhelming. There is no reasonable
04:59PM 8 doubt in this case on the elements we have to prove. Any
04:59PM 9 doubts you would have would be unreasonable based on the
04:59PM 10 overwhelming evidence that you heard.

04:59PM 11 His choices for over 20 years made him guilty. So
04:59PM 12 facts, plus law, equals verdict. He is guilty of every single
04:59PM 13 count, as sure as you're sitting in those chairs.

05:00PM 14 Thank you for your time and attention. Sorry I spoke
05:00PM 15 so fast at the end there. Thank you.

05:00PM 16 **THE COURT:** Okay. So we are now done for the day.

05:00PM 17 I want you to remember my instructions about not
05:00PM 18 communicating about the case in any way with anyone including
05:00PM 19 each other. Don't use tools of technology to try to learn
05:00PM 20 anything about the case or to communicate about the case.

05:00PM 21 Don't read, or listen to, or watch any news coverage,
05:00PM 22 if there is any, while the trial's in progress. And don't
05:00PM 23 make up your mind just yet.

05:00PM 24 Tomorrow morning, 9:00 sharp. I'm going to start
05:00PM 25 instructing you. It's going to be a long set of instructions,

05:00PM 1 two to three hours. You've got to listen to me for two to
05:00PM 2 three hours. It's hard, I know that. It's hard for me to
05:00PM 3 read it. And I'm not going to be making much eye contact with
05:00PM 4 you because I'm going to be reading because it's so important
05:00PM 5 that I get the law right. So come prepared to listen to me
05:00PM 6 and to pay attention to me, because it's important that you
05:01PM 7 pay attention to what law is. That's -- that's the heart of
05:01PM 8 what you have to understand so that you can make factual
05:01PM 9 decisions and apply the law that I give you to those facts
05:01PM 10 that you find. Okay?

05:01PM 11 So get a very good night sleep tonight. Drive
05:01PM 12 carefully. Be here at 9:00 sharp.

05:01PM 13 I want to start right at 9:00 because there's at
05:01PM 14 least one juror who wants to be out of here by 12:30, and I
05:01PM 15 want you to at least be able to go back into the jury room and
05:01PM 16 pick a foreperson, and do the preliminary kinds of things that
05:01PM 17 you have to do before you break for the day tomorrow, and then
05:01PM 18 come back on Monday. Okay?

05:01PM 19 So thank you all very, very much. We'll see you
05:01PM 20 tomorrow morning at 9:00.

05:01PM 21 **JUROR:** Will those be moved tomorrow?

05:01PM 22 **THE COURT:** I hope so.

05:01PM 23 **JUROR:** I can't see you.

05:02PM 24 **THE COURT:** That's a good thing for you that you
05:02PM 25 can't see me.

05:02PM 1 **MR. TRIPI:** Sorry about that.

05:02PM 2 (Jury excused at 5:02 p.m.)

05:02PM 3 **THE COURT:** Okay. Before I talk about the charge
05:02PM 4 very briefly, anything for the record from the defense?

05:02PM 5 **MR. SOEHNLEIN:** No, thank you, Judge.

05:02PM 6 **MR. FOTI:** No.

05:02PM 7 **THE COURT:** Okay. Anything from the government?

05:02PM 8 **MR. TRIPI:** No, thank you, Judge.

05:02PM 9 Oops, sorry, go ahead, Mr. Cooper.

05:02PM 10 **MR. COOPER:** Just a reminder. I spoke with the
05:02PM 11 defense about marking that newspaper exhibit that was shown to
05:02PM 12 Ben Rivera, we still need to do that.

05:02PM 13 **THE COURT:** Okay. So, let's -- let's talk about the
05:02PM 14 three -- I think the three issues that are remaining.

05:02PM 15 First of all, I have thought long and hard,
05:02PM 16 Mr. Cooper, about including something about the addiction and
05:02PM 17 that being sufficient to -- to show overcoming will and
05:03PM 18 coercion and I'm not going to do it. I think it's a mistake,
05:03PM 19 I think that it is singling out evidence. I think that would
05:03PM 20 be unfair to the defendant, and I'm not going to do that.

05:03PM 21 You made a fine argument on that. The defense did
05:03PM 22 not really contest that, and I just don't think it's the right
05:03PM 23 thing to do.

05:03PM 24 And I -- I thought about it, I thought about it lots
05:03PM 25 of different ways. I told you I would, and I have, and I'm

05:03PM 1 not going to do it.

05:03PM 2 Number 2, with respect to the buyer/seller charge,
05:03PM 3 the requested buyer/seller charge, and with respect to the
05:03PM 4 gratuities versus bribe charge, I've given you proposals that
05:03PM 5 are going to make neither side happy.

05:03PM 6 What I'm going to do is -- what I'm inclined to do,
05:03PM 7 and I'll listen to what you folks have to say, is to include
05:03PM 8 one statement, one sentence about buyer/seller that I think is
05:03PM 9 an accurate statement of the law, and that I think is the only
05:03PM 10 way that buyer/seller -- I mean, all the jury needs to know is
05:04PM 11 that a sale is not a conspiracy. And so I think they can be
05:04PM 12 told that.

05:04PM 13 But the rest of the stuff -- and I'm willing to
05:04PM 14 listen to the defense argue to me that the rest of the stuff
05:04PM 15 should come in, but the stuff about the length of time of the
05:04PM 16 relationship existed, and the amount of drugs that were
05:04PM 17 exchanged, there's no one sale here. And so it's -- it's
05:04PM 18 hard.

05:04PM 19 This is not a situation where the proof came in that
05:04PM 20 Joe Smith was the supplier and John Brown was the middleman
05:04PM 21 and sold drugs to somebody else. Where that might, you know,
05:04PM 22 could be a buyer/seller. But -- but that's not what we have
05:04PM 23 here.

05:04PM 24 So I think including that one sentence is sufficient.
05:04PM 25 And I'll hear from the government why that one sentence

1 shouldn't be included, but I think that that's what I'm
2 inclined to do.

3 And then with respect to the -- the distinction
4 between bribes and gratuities, same sort of thing. I'm going
5 to give a one-sentence statement when I talk about what a
6 bribe is, and -- and that it doesn't have to be a, you know,
7 perfect quid pro quo, I'm giving you this to do that. It can
8 be for a stream of benefits sort of thing.

9 I am going to say -- I'm inclined to say, I -- I
10 haven't decided 100 percent, but I'm inclined to say that a
11 payment for something that somebody already did is not a
12 bribe. I think that's -- that's the law. I took the quote
13 from the Supreme Court decision, and that's what I'm inclined
14 to do. I'm not inclined to give anything more on that.

15 **MR. TRIPI:** Can I be heard on that one first, Judge?

16 **THE COURT:** Pardon me?

17 **MR. TRIPI:** Can I be heard on that one first?

18 **THE COURT:** Sure, yeah. We're going to do this
19 tomorrow morning.

20 **MR. TRIPI:** Oh, okay, my fault.

21 **THE COURT:** Yeah, no, we're going to do this tomorrow
22 morning. I just wanted to lay this out now so that
23 Mr. Soehnlein can have an opportunity to weigh in to -- with
24 Mr. Foti, and then Mr. Foti -- so I want you folks here at
25 8:30 tomorrow --

05:06PM

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MR. TRIPI: Okay.

05:06PM

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THE COURT: -- and we will vet these at 8:30

05:06PM

3

tomorrow, okay?

05:06PM

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MR. SOEHNLEIN: Thank you, Judge.

05:06PM

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MR. TRIPI: That sounds a lot better than now. Thank

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6

you.

05:06PM

7

THE COURT: Yeah, I -- I didn't want to do that to

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8

you, Mr. Tripi, because I know you're exhausted, Mr. Cooper,

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9

is exhausted, Mr. Foti is exhausted, Mr. Soehnlein is

05:06PM

10

exhausted I'm sure, and I'm a little tired myself. So let's

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11

do it tomorrow at 8:30. Okay?

05:06PM

12

MR. SOEHNLEIN: And, Judge, tomorrow when I'm gone,

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13

will you just give a similar statement to the jury like you

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14

did for Ms. Chalbeck?

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15

THE COURT: I will, absolutely.

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MR. SOEHNLEIN: Thank you, I appreciate it.

05:06PM

17

THE COURT: Yep, absolutely.

05:06PM

18

Okay. Anything else from the government?

05:06PM

19

MR. COOPER: No.

05:06PM

20

MR. TRIPI: Nothing else. I just want to say to the

05:06PM

21

defense team, good job. That's it.

05:06PM

22

THE COURT: Anything else from the defense?

05:06PM

23

MR. SOEHNLEIN: No, thank you, Judge.

05:06PM

24

THE COURT: Okay. Terrific. Thank you all very

05:06PM

25

much. See you tomorrow morning.

05:06PM

1 **THE CLERK:** All rise.

05:06PM

2 (Proceedings concluded at 5:06 p.m.)

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8 **CERTIFICATE OF REPORTER**

9

10 In accordance with 28, U.S.C., 753(b), I
11 certify that these original notes are a true and correct
12 record of proceedings in the United States District Court for
13 the Western District of New York on December 19, 2024.

14

15

16

s/ Ann M. Sawyer

17

Ann M. Sawyer, FCRR, RPR, CRR

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Official Court Reporter

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U.S.D.C., W.D.N.Y.

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